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EXTRAORDINARY

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 26th August 1954

S.R.O. 2932.—Whereas the election of Shri S. M. Mariyappa, as a member of the Legislative Assembly of the State of Mysore, from the Periyapatna constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shankare Gowda, Doddakoppalur Village, Haleyr Dakle, Chunchanakatte Hobli, Krishnarajanagar Taluk, Mysore State;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MYSORE, BANGALORE.

Bangalore, the 9th November 1953.

PRESENT

Sri V. Kandaswami Pillai, B.A., B.L. (Retired Judge, High Court of Mysore), Chairman, Election Tribunal, Mysore, Bangalore.

Sri H. Hombe Gowda, B.Sc., LL.B., Additional District & Sessions Judge, Judicial Member, Election Tribunal, Mysore, Bangalore.

Sri Mir. Iqbal Hussain, B.A., B.L., Advocate-Member, Election Tribunal, Mysore, Bangalore.

ELECTION PETITION No. 135 of 1952

PETITIONER

Sri Shankare Gowda, son of Shankare Gowda, aged 49 years, Caste—Vokkaligar, Occupation—Agriculture and trade, residing at Dodda

(1457)

Koppal Village, Haleyr Dakle, Chunchanakatte Hobli, Krishnarajanagar Taluk (Periyapatna Constituency).

Vs.

RESPONDENTS

1. Shri S. M. Mariyappa, son of Malali Gowda, age 35 years, Caste Kurubar, Occupation—Agriculture and trade, residing at Sundaval, Periyapatna Taluk.
2. Shri H. M. Chennabasappa, son of Muddubasappa, age 45 years, Caste—Lingayet, Occupation—President, District Board, Mysore.

This is an election petition filed by Sri Shankare Gowda, a voter, under Section 81 of the Representation of the People Act, 1951, praying for a declaration that the election of the first respondent to the State Legislative Assembly from Periyapatna Constituency may be declared void.

JUDGMENT

Respondents were the only candidates for election to the State Legislative Assembly from Periyapatna Constituency. The first respondent was an independent candidate and the second respondent a congress nominee. The election was very keenly contested and first respondent was declared duly elected.

2. The petitioner, as an elector, has brought this election petition under Section 81 of the Representation of the People Act, 1951, challenging the validity of election of first respondent on the ground of corrupt and illegal practices.

3. According to the petitioner, general bribery and general undue influence have prevailed throughout the Constituency and materially affected the result of the election. Three lists have been appended to the election petition. The first one enumerates the corrupt and illegal practices relied on by him, with some particulars. The second one contains the names of persons including first respondent, who are alleged to have committed them and the third one the places at which these have been committed between 1st January and 24th January 1952. In the first list, he has set out some instances of bribery—offer of Rs. 4,000 to the Managing Committee of the High School attached to Gurukula Ashram at Chunchanakatte for the benefit of that school, for securing votes in that locality and surrounding villages, offer of Rs. 4,000 to Hospital at Makedu in exchange for votes, offer of bribes to Patels and Shanbagues to influence votes and treating of voters at Periyapatna and other places by first respondent and his agents on the date of election. All these are in relation to his plea of general bribery. As regards the other corrupt practices, specific mention is made of alleged undue influence by officials, such as Patels, Shanbagues and teachers on the electorate.

4. Petitioner has also mentioned that first respondent and his agents and others with their connivance, have published certain false statements as detailed at paragraph (5) of the first list in relation to the personal character and conduct of the second respondent throughout the Constituency, with the object of affecting his prospects at the election.

5. Petitioner has further averred that first respondent and his agents have made payments to certain persons for hiring carts and vehicles propelled by mechanical power, for conveying voters to the polling booths on the date of election.

6. Two other major corrupt practices, such as, alleged plural voting on the part of one Sanna Mote Gowda of Dodda Koppal in Haleyr and Kuppe polling booths and removal of ballot papers outside some polling booth, at the instance of first respondent and his agents have also been relied on.

7. (a) Petition impugns the return of election expenses submitted by the first respondent, as being defective and incorrect in material particulars, he having exceeded the maximum-limit of expenses prescribed for the Assembly election.

(b) Petitioner adds that there was a systematic appeal to voters on the part of first respondent and his agents to vote on communal grounds.

8. According to petitioner, there was only one instance of illegal practice, that is, an incurring of unauthorised expenses by persons other than first respondent and his agents, Sri Abdul Gaffoor Khan of Gundlepet, Sri Srinivasa Iyengar of T-Narasipur and Sri V. K. Nanjundiah of Gundlepet for holding public meetings and carrying on propaganda for the first respondent.

9. On all these grounds, petitioner has prayed for a declaration that the election of first respondent is void.

10. Second respondent has supported the petitioner with regard to all the allegations mentioned in the election petition.

11. First respondent has raised several objections to the petition. According to him, the election petition is liable to be dismissed as the petitioner has failed to comply with the provisions of Clause (2) of Section 83 of the Representation of the People Act, 1951 in not having furnished a list with full particulars of each corrupt or illegal practice, the name of person who has committed it and the time and place of such commission, he having filed three lists not connected with one another, with a view to manipulate evidence and thus spring a surprise on the first respondent. A stand is also taken by him that the election petition is liable to be dismissed as no court fee is paid thereon. The first respondent denies all the corrupt and illegal practices as detailed in the election petition. He also pleads that the pertinent averments of the petitioner as to the alleged publication of false statements bearing on the personal character and conduct of the second respondent are vague for want of particulars as to whether the statements were oral or written and as to the persons to whom the alleged publication was made and that these statements have all been concocted by the petitioner. As regards Gurukula Ashram High School, his plea is that Mysore District Board of which the second respondent is the President, has made a grant of Rs. 5,000 to it on the eve of election, the petitioner being one of his partisans and important member of the Managing Committee of the High School and the grant was made to secure votes for him through the petitioner wherever his influence counted.

12. On 29th October 1952, petitioner filed a lengthy reply to the objections of the first respondent, setting out full particulars of several instances of corrupt practices and Interim Application III under Rule 17 of Order 6 of the Code of Civil Procedure and Clause (3) of Section 83 of the Representation of the People Act, 1951, praying for permission to amend and amplify the lists filed with the election petition by incorporating such particulars. Objections were filed by the first respondent and order was passed allowing the application, after elaborate arguments.

13. In the course of discussion, each specific instance of corrupt practice as per amended list, relied on by the petitioner, will be set out, first respondent having denied all of them.

14. The following issues were framed:—

(1) Whether the instances of corrupt practice of bribery, alleged in the amended list annexed to the Election Petition, as having occurred in canvassing votes for the first respondent, at the instance of the first respondent and his agent or agents or either of them as the case may be, are true?

Or

Whether the Mysore District Board of which the second respondent is the President, made a grant of Rs. 5,000 to the Gurukula High School at Chunchanakatte, just prior to the election and whether the petitioner is a leading member of the Managing Committee of the School?

(2) Whether instances of undue influence, alleged in the said amended list as having been brought to bear on the electorate to vote for the first respondent, at the instance of the first respondent and his agent or agents or either of them, as the case may be, are true?

(3) (a) Whether Patels and Shanbagues in places set out against the eighth head of the original III list and Shanbagues referred to in the said amended list, have been offered bribes to influence votes in furtherance of the election of the first respondent and whether, at the said places, they as well as teachers, also under Government, have exercised undue influence on the voters, in this regard by threat, coercion and intimidation?

(b) If so, whether their assistance was procured by the first respondent or his agent or by any person with his connivance or his agent?

(4) Whether the first respondent and his agents and other persons with the connivance of the first respondent and his agents, have published false statements relating to personal character and conduct of the second respondent as per entire paragraph 5 in the original first list annexed to the election petition, throughout the Constituency, and if so, whether these statements could be reasonably calculated to have prejudiced the prospects of the second respondent's election, and had materially affected the result of the election?

Or

Whether the averment in connection with the statements, is vague for want of particulars as to whether they were oral or written and the persons to whom the alleged publication is made?

(5) Whether the first respondent and his agents have hired carts to convey voters to the polling booths at places set out in the said amended list and paid the cart hire as detailed in it? Whether they hired vehicles propelled by mechanical power also for the purpose?

(6) Whether the first respondent has incurred the legitimate expenses on his election propaganda as set out in the said amended list and if so, whether the return of election expenses submitted by the first respondent, is devoid of material particulars on his failure to set them out therein?

Or

Whether the return of election expenses submitted by the first respondent is correct?

(7) Whether the persons other than the first respondent and his agents—Sri Gaffoor Khan of Gundlepet, and Sri Srinivasa Iyengar of T-Narasipur—unauthorisedly incurred expenses for holding public meetings and for publication and other propaganda in Periyapatna Constituency, for promoting and procuring the election of the first respondent just before the election?

(8) Whether there were instances of plural voting, such as the one by Sanna Mote Gowda of Dodda Koppal in Haleyr and Kuppe Polling booths, and procuring of ballot papers in fictitious names and in names of dead persons at the polling stations set out against the third head in the original third list at the instance of the first respondent and his agents?

(9) Whether there was removal of ballot papers outside the polling station of Periyapatna? Whether it was at the instance of the first respondent and his agents or by any person with the connivance of the first respondent or his agents?

(10) Who are the person or persons that are responsible for the commission of any corrupt or illegal practice on proof thereof?

(11) Whether the election petition is liable to be dismissed for non-payment of court-fee thereon?

(12) To what relief, if any, are parties entitled?

15. The petitioner is a member of Mysore Congress Organisation. He has brought the election petition as a voter in Periyapatna Constituency for having the election of the first respondent set aside on the ground of several corrupt practices and an illegal practice. As P.W. 107, he has made it appear that he has personal knowledge of commission of some of the corrupt practices. He gives out that the main reason that prevailed with him for filing the election petition was communal distinction that was brought to relief in the course of election propaganda for the first respondent. Second respondent (2nd R.W. 1) has attributed his defeat in the election to the corrupt practices alleged to have been practised by the first respondent and his agents. Hence it is to be seen whether they resorted to these malpractices, thus affecting the freedom of election.

16. Counsel for the petitioner has argued at considerable length that the first respondent has incurred several items of legitimate expenses on his election as set out in his amended list of particulars but has omitted to make mention of them in his return of election expenses for fear that, if mentioned, he would have exceeded the maximum limit of election expenses fixed for the Assembly election under Rule 117 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, Schedule V for a single member Constituency like the present one, that is, Rs. 5,000. Exhibit Q is the report of election expenses submitted by the first respondent, supported by vouchers, Exhibits Q (3) to Q (25). In Exhibit Q, he has shown that he has incurred expenses of Rs. 4,328-14-6 on his election and he has paid a sum of Rs. 3,106-10-6 towards it and still owes balance of Rs. 1,222-4-0. If the items of expenditure shown

in Exhibit Q, were the only ones he had incurred on his election, then it must be held that he has not exceeded the said maximum of Rs. 5,000 but if he had incurred most of the legitimate expenses set out in the amended list, then he must be deemed to have exceeded this maximum. According to him as 1st R.W. 86, he has engaged five taxis for his election campaign. These bear registration numbers MY. 8487 Z, MY. 1021 X, MY. 5322 Z, MY. 1684 X and MY. 2389 X. For the hire paid for these taxis, he has obtained receipts as per Exhibits Q (5), Q (6), Q (8) to Q (10) respectively. As regards Exhibit Q (8) the number of the pertinent taxi has been set out in the body of it as MY. 532 Z and as MY. 5322 just over the receipt stamp affixed to it; but it is admitted that its correct registration number is MY. 5322 Z. There are some corrections in Exhibit Q (8) relating to the period for which the taxi had been engaged as well as the hire due therefor. Sri S. Raju, Advocate of Mysore, who was assisting the counsel for the first respondent during the proceedings of this case, has admittedly drawn up Exhibit Q (8) but the first respondent has not chosen to examine him as his witness with regard to the corrections though he was available on several occasions in court and has given out as 1st R.W. 86 that he wrote it after obtaining instructions from the driver of the taxi and after having finally fixed Rs. 18 as daily hire for it with its owner, he (1st R.W. 86) having obtained a remission of Rs. 10 from him. At the said rate, the hire for 45 days would be Rs. 810 and after the remission, the balance would be Rs. 800. In Exhibit Q (8) the period of hire had been originally set down as 20 days and the hire as Rs. 400 and these have been overwritten as 45 days and Rs. 800. As more expenditure is shown as incurred by means of corrections in Exhibit Q. (8) we hold that these were *bona fide*.

17. 1st R.W. 86 asserts that he was purchasing petrol and oil sometimes for cash, and most often for credit on petrol indents only from the bunk of Messrs. V. D. Rajaram & Co. at the bus stand at Mysore. Exhibits Q17 to Q24 are the cash bills he obtained from the bunk for purchase of petrol and oil between 9th December 1951 and 13th January 1952. P.W. 108 Krishnappa is the clerk in the bunk. He makes it appear that, on the recommendation of Sri Rame Gowda, Government Bus Inspector, who was then at Mysore, a credit account was opened in the name of the first respondent in the bunk and both of them had asked him to supply petrol on credit on indents received from Nanjappa, Amekar and Sri S. Raju and debit the price thereof to first respondent's account. Exhibit F dated 17th January 1952, to Exhibit F 23 dated 23rd January 1952, are petrol indents he purported to have received between 18th January 1952 and 24th January 1952 from either of these three persons respectively and he has noted in them the name of the first respondent as these pertained to his account. It is also significant to note that, in each of Exhibits F(2) to F(5), F8, F11 to F13, F15 to F18, F21 and F22 the registration number of vehicles has been noted and the witness's version is that it was done by the signatory of the respective indent to show that the petrol and oil drawn on it were meant for that particular vehicle. In Exhibit F10, G. Pet van has been mentioned.

18. The counsel for the petitioner had applied to the company for a copy of these indents and P.W. 8 Sri B. S. Subramaniya, an Accountant of the company prepared the copy, Exhibit H and gave it to him. On 31st January, 1952, the first respondent also obtained from the company an extract of accounts relating to the supply of petrol to him between 18th January 1952 and 24th January 1952 on credit. It is Exhibit Q25. Both Exhibits H and Q(25) show that a sum of Rs. 1222-4-0 was the amount due on account of such supply. In Exhibit Q he has shown this amount as still due.

19. It is now contended by the counsel for the first respondent Sri A. C. Byrappa, that Exhibit F to F23 were not the indents he issued to the company and these have been substituted for the indents he issued to it between 17th January 1952 and 23rd January 1952, noting the registration numbers of respective motor vehicles in some of them. We have compared the dates of issue of petrol and oil and their quantity as set out in Exhibit Q25 with those as set out in Exhibit H and they tally. Exhibits F7, F8, F17 and F21 purport to bear the signature of Sri S. Raju. The first respondent has not chosen to examine him with reference to these exhibits. If his evidence had been placed on record in this connection, then the Tribunal would have been in a position to say whether these exhibits were genuine or not. As 1st R.W. 86, his explanation for his failure to produce the counterfoils of his petrol indents that these were seized by the Police along with his account book of election expenses and other documents on search of his house in Muddenahalli in the criminal case against him on the file of the City Magistrate, Mysore, for alleged smuggling of timber, is not acceptable as he has not applied and produced a copy of any such search list. At a later stage, the question on this aspect of investigation by the Police

will be fully discussed. There is nothing on record to discredit the testimony of P.Ws 108 and 8. We therefore hold that Exhibits F to F23 are genuine and hence there is no force in the contention of the first respondent's counsel.

20. Petitioner's counsel has placed reliance on the entries of registration numbers of vehicles in some of these exhibits as showing that he had used them for his election, besides the taxis he had admitted. As per the amended list of particulars, the first respondent is stated to have made use of 6 cars on hire and 6 cars and a bus on free service in addition to the said five taxis. Petitioner's counsel contends that he has failed to mention the hire and the probable value of the free service for the first two sets of vehicles respectively along with the repairing charges of one of the cars taken out on free service, as per details set out in the first paragraph under the caption 'Return of election expenses' in the said list. The registration number of the bus said to have been taken out on free service is MY. 3394 Z. It is of K. K. Bus Service which is in the name of 1st R.W. 78 Sri K. Kempe Gowda. In Exhibit F21, the registration number of the vehicle is mentioned. Under it, petrol was drawn on 24th January 1952, that is, the date of the Assembly election in dispute. Petitioner has not led any evidence to show that this bus was used either by the first respondent or any of his canvassers for election propaganda on that date. The first respondent has examined not only 1st R.W. 78 but also some traffic Police Officials to prove that there was no deviation of the prescribed routes of the bus on that day. Daily the bus has to leave Yedakola at 8.30 A.M. for Mysore, arrive at Mysore and then leave Mysore for T-Narasipur and then on return, arrive at Mysore at 3 P.M. and leave Mysore at 5.30 P.M. for Yedakola. These are the prescribed routes of the bus (Vide evidence of 1st R.W. 78). He denies that he lent the bus to the first respondent for his use on 24th January 1952 and on that date, there was deviation of the prescribed routes. He also denies that he got petrol supplied to the bus either by the first respondent or people on his side. The traffic check register, Exhibit XXV, relating to the Mysore City bus stand from 17th January 1952 to 27th January 1952 was produced by Police Daffedar on traffic duty at Mysore, Sri K. S. Malliah, 1st R.W. 77. The entries, Exhibit XXV(a) to XXV(d) under date 24th January 1952, relate to this bus. The bus arrived at Mysore City bus stand that day from Yedakola at 10.30 A.M. as per Exhibit XXV(a). She left Mysore at 10.45 A.M. for T-Narasipur as per Exhibit XXV(b), returned to Mysore from T-Narasipur at 3-15 P.M. as per Exhibit XXV(c) and left Mysore for Yedakola at 5-30 P.M. as per Exhibit XXV(d). Nothing has been elicited in the course of cross-examination of 1st R.W. 77 to show that these entries do not represent a true state of facts. Indeed, in January 1952, 1st R.W. 77 was on traffic duty at the Mysore City bus stand and he speaks to the conductor of that bus having affixed his signatures to those Exhibits. 1st R.W. 63 S. Puttiah is Police Constable attached to Megalapur Out Post and he produced the traffic check register, Exhibit XVII, maintained at the Out Post, containing *inter alia* entries relating to buses which passed by that Out Post on 24th January 1952. He speaks to two entries, Exhibits XVII(a) and XVII(b) the first one purporting to show that the bus arrived at that Out Post at 9 A.M. and left it at 9.5 A.M. for Mysore and the second one, that it arrived at the Out Post from Mysore at 6 P.M. and left the Out Post at 6.5 P.M. for Yedakola. He has joined duty at the Out Post only 1½ months prior to the date of his examination on 8th August 1953 and hence he has no personal knowledge of these entries. The first respondent would have done well if he had examined the constable or constables that were on duty at that Out Post on 24th January 1952 in relation to these entries; but Exhibits XXV(a) to XXV(d) indicate that the bus kept to its prescribed routes on 24th January 1952. Hence it could not have been made use of in Periyapatna Constituency for purpose of election on that date. Simply because Exhibit F(21) mentions the registration number of the bus, it could not be inferred from it that petrol was supplied to it for undertaking journey for the first respondent's election.

21. In the amended list of particulars, mention of a car MY. 9082 Z is made as having been used for the first respondent's election on free service. With reference to the registers of motor vehicles maintained in the Motor Branch of the Office of the Inspector General of Police, Mysore, Bangalore, the Head Clerk in charge of the Branch, P.W. 125 Sri H. L. Ramaswami, has deposed that Sri Abdul Gaffoor Khan, landlord of Gundlepet, is the owner of that vehicle. No witnesses have been examined by the petitioner to show that this vehicle was ever made use of by the first respondent or his canvassers for his election. On the other hand, under Exhibit FF(22) petrol was issued on 24th January 1952 for Car MY. 9032 Z. The owner of this vehicle is one Sri P. M. Parasiva Murthy, Talkad, T-Narasipur Taluk. The petitioner's counsel relies on this Exhibit and argues that the petrol must have been drawn for this car in the first respondent's account for using it for his election on 24th January 1952. There is no oral

evidence to support this his contention. No such inference as he wants us to draw from a bare mention of the registration number of the car in Exhibit F(22) could be drawn.

22(a). Car, MY. 5504 X has been shown in the amended list as one of the cars hired by the first respondent. The registration of the car stands in the name of Sri G. A. Lathier, Bangalore (Vide evidence of P.W. 125). In Exhibit F(2) this number has been mentioned and on it, petrol was drawn on 18th January 1952.

(b) Mention is made of G-Pet van in Exhibit F10 on which petrol and oil were drawn on 21st January 1952.

(c) Vehicle, bearing MY. 5321 X, is a lorry and is not a car on free service as mentioned in the said list. The number is mentioned in Exhibit F15 by which petrol was drawn on 22nd January 1952.

(d) Car MY. 4908 X is mentioned in the list as hired by the first respondent. Its number is found in Exhibits F16 and F18. On Exhibit F16, petrol and oil were drawn on 22nd January 1952. On Exhibit F18, petrol was drawn on 23rd January 1952.

(e) Petitioner's counsel now argues that the said vehicles were on free service from 18th January 1952 to 24th January 1952, 21st January 1952 to 24th January 1952, 22nd January 1952 to 24th January 1952 and 22nd January 1952 to 24th January 1952—both dates in each of these periods being included respectively, and the reasonable probable value for such free service has to be calculated at the rate of Rs. 30 per day in respect of each vehicle. These respective periods commence from the date on which petrol or petrol and oil were drawn on Exhibits F2, F10, F15 and F16. So far as the first and fourth vehicles are concerned, there is no proof that they have been hired out to the first respondent. The petitioner cannot be allowed to depart from his pleadings and now assert that the value of free service of the vehicles should have been shown in Exhibit Q. As held in case of bus MY. 3394 Z, from mere mention of registration numbers of vehicles or name of van in the aforesaid exhibits issued for the first respondent, it cannot be inferred that they were used for his election.

23. Van No. MY. 2650 Z is owned by Sri Badanarayanachar P.W. 17. In the said list, hire of car MY. 2650 X, has been set down but the number should have been given as MY. 2650 Z. Even P.W. 17 has given the number of the vehicle as MY. 2615 Z. It is P.W. 4 Nagesh, the driver of the vehicle under P.W. 17 that has given its correct number and he alleges that he took it to Periyapatna for first respondent's election and it was used by him on 23rd January 1952 and 24th January 1952 for a daily hire of Rs. 40 without running expenses, and this was at the instance of Sri Rame Gowda, Government Bus Inspector at Mysore, he having had petrol supplied to it at Mysore, and also paid the hire of Rs. 80. P.W. 17 mentions the name of one Rangu, a booking agent for buses at Mysore as having engaged the vehicle for hire at the said rate for these two days for the first respondent's election. As P. Ws. 4 and 17 do not agree as to the person who is alleged to have engaged the vehicle for the first respondent, we hold that it was not engaged for him for his election.

24. Car MY. 3384 X was shown under hired cars in the list. P.W. 33 Sri Nazir Ahmed Khan is the owner of the car. He has stated that Sri Rame Gowda asked him to send his car to Periyapatna for election for five days on hire of Rs. 30 per day. In Exhibit F(8) its number is mentioned and petrol and oil were drawn on it on 20th January 1952. Hence counsel for petitioner argues that it must have been used for five days from that date, including the date of election. P.W. 33 purports that the driver of the car, Dada brought the hire for five days and paid it to him. P.W. 119 Venkoba Rao is also known as Dada. He gives out even the number of the car of P.W. 33 wrongly as MY. 2474 Z. As per this witness, as directed by P.W. 33, he took two persons in his car to Chunchanakatte and dropped them there and returned that very evening. Petitioner's counsel asked for permission to treat this witness as hostile but the permission was refused as there were no materials on record to do so. As he has not supported P.W. 33 on the point of hire, we do not think it safe to hold that he hired out the car for the the first respondent's election.

25(a). Car MY. 8878 Z is shown as one of the free service cars in the list. P.W. 20 Sri Sultan Mohamed Khan Durani is the owner of the car. P.W. 5 Mohamed Yousuff is the driver of the car. P.W. 42 M. Kandoji Rao is a friend of both P.W. 20 and first respondent, and his evidence is that he had the car lent to first respondent by P.W. 20 for six or seven days for his election, the first respondent himself having to meet the running expenses and provide meals for the driver. P.W. 20 also corroborates him except that he stated that it was

taken to Periyapatna for election for 5 or 6 days. P.W. 5 refers to Sri Rame Gowda as having engaged the car with P.W. 20 for hire for first respondent's election and to his having driven the car for him for eight days prior to the date of election. Later he has stated that he came to know that it was engaged by Sri Rame Gowda for hire when P.W. 20 asked him to take the car to him. Hence Sri Rame Gowda has taken some interest in sending the car from Mysore to Periyapatna for the first respondent's use at the election. As P.W. 5 was not present when P.W. 20 lent the use of the car at the instance of P.W. 42 as deposed by P.W. 20, P.W. 5 must have inferred that it was hired out. In Exhibits F3 and F(5) the number of the vehicle is mentioned and petrol and oil were drawn on Exhibit F3 on 18th January 1952. As P.W. 5 has given the period the car was used for election as eight days, the car must have been taken to Periyapatna on 17th January 1952. The probable value of the free service of the car for the period is Rs. 240 at Rs. 30 per day.

(b) Car MY. 1837 X is owned by Mysore Tyres, the Proprietor of which is P.W. 31 Sri Mammon Abraham. He is running the Mysore Tyres Company and not Mysore Tiles Company as found in his deposition. His factory is located in a building in Mysore, owned by P.W. 1 Sri N. S. Shivashanker. Sri Rame Gowda approached him first to hire out the vehicle to the first respondent but, as he did not know him, he took him to P.W. 1's house (Vide evidence of P.W. 31). P.W. 1 states, that he had it hired for him P.W. 31 (Vide P.W. 1's evidence). P.W. 1 also refers to Sri Chandrasekhar having approached him along with Sri Rame Gowda for the purpose of hiring out the vehicle for the first respondent but P.W. 31 has not referred to Sri Chandrasekhar having approached him along with Sri Rame Gowda. Hence his (Sri Chandrasekhar's) alleged visit to P.W. 1 must be deemed to have not been proved. There is nothing in the evidence of P.W. 1 and P.W. 31 to suggest that they were then on bad terms either with Sri Rame Gowda or first respondent. From P.W. 31's evidence, it is clear that he has lent the car for first respondent's use. Probable period for which the vehicle was used by the first respondent might be fixed as eight days. The driver of the vehicle came to P.W. 31, 3 or 4 days after the vehicle was sent to the first respondent and reported to him that the gear box gave way and he was sent to Bangalore by the First respondent to purchase a second hand gear box and 8 or 9 days after the driver informed him of the damage to the gear box, he brought back the vehicle to Mysore (Vide P.W. 31's evidence). In the list, the petitioner has mentioned Rs. 300 as repairing charges as against the vehicle and Rs. 390 as the value of free service of the vehicle for 13 days at Rs. 30 per day. Even allowing three days for the driver to go to Bangalore from Periyapatna where he left the car and return, the car might have been used for 8 days in Periyapatna Constituency as could be gathered from his evidence. So the value of free service of the vehicle for 8 days at the probable rate of Rs. 30 per day will be Rs. 240. The driver was entrusted with Rs. 300. As the value of a second hand gear box might be Rs. 250 as deposed by P.W. 31, the driver might have spent Rs. 250 on such gear box and utilised Rs. 50 for the expenses of his journey etc.

26. Much evidence has been led by the petitioner as regards the Pontiac car MY. 3173 X which belonged to P.W. 11 Sri Srinivasa Thantri, Proprietor of Sri Krishna Restaurant at Mysore. The witness mentions that on 11th November 1951, Sri Rame Gowda first approached him to hire out the car to the first respondent for his election but he refused to do as he was not acquainted with him and then he brought one Sri Krishnappa, Proprietor of Mallikarjuna Bus Service and on his recommendation, he hired out the car for the first respondent's use, having fixed the daily hire at Rs. 12-3-0 with Sri Rame Gowda and it was P.W. 10 Narayana, his driver, that took the car to Sundaval, the first respondent's village that day. P.W. 10 also corroborates him by mentioning that he took the car to that village and adds that he drove the car for him for his election for a month and eight days and thereafter, as he had an attack of fever he left his master's service after obtaining his salary of Rs. 40 from the first respondent for five weeks. P.W. 6 Anthony purports to have been the cleaner of the car. He also refers to P.W. 10 having worked for a month and 8 days as driver of the car in connection with the first respondent's election campaign and the first respondent having made use of the car for another five weeks, having engaged one Channappa as driver in his stead. P.W. 11 chanced to find the car left in front of his house on 1st February 1952. Exhibit J is the note book maintained by P.W. 11, for noting down the expenditure incurred by him on some items. Exhibit J(1) are the entries which, according to him, go to show that he had received in all a sum of Rs. 290 from Sri Rame Gowda in part adjustment of the hire of the car in instalments. In all, there are seven payments. The first six bear dates between 12th November 1951 and 7th January 1952 and the last one is not dated. Exhibit K is a slip of paper on which some calculations have been made. P.W. 11 adds that Exhibits K(1) and K(2) are in the writing of Sri Rame Gowda. There

is nothing to show that these are concocted. As per Exhibit K(2) he has arrived at a sum of Rs. 324-9-0 as having been incurred by him as charges for repairing the car during the period it was on hire and in Exhibit K(1) he has taken 78 days as the period of use of the car as arrived at by P.W. 11 in Exhibit K(3) and the daily hire as Rs. 10 having reduced the daily hire of Rs. 12-8-0 by Rs. 2-8-0 and as per Exhibit K(1) fixed the total hire at Rs. 780 and adjusted the repairing charges of Rs. 324-9-0 and the payments he had made aggregating to Rs. 290, in all Rs. "514-9-0" (Note: It ought to be Rs. 614-9-0) towards the said hire. He did not agree with Sri Rame Gowde for the reduction of daily hire from Rs. 12-8-0 to Rs. 10. He did not agree to the repairing charges of Rs. 324-9-0 (*Vide* his evidence). He got notices of demand issued to him to Bangalore to which place he has been transferred, and the first respondent. The notice issued to Sri Rame Gowda was returned for want of correct address but the first respondent sent a reply to the notice served on him. The balance of hire claimed in the notices is not given out by him. The hire for 78 days at Rs. 12-8-0 comes up to Rs. 975. Towards it, Rs. 290 had been paid. A balance of Rs. 685 is left. The balance of hire due must be Rs. 685, P.W. 11 having stated that he kept Exhibit K with him to show to Sri Krishnappa, not having agreed to details in it and first respondent having failed to produce the notice he issued to him and showed that he claimed less.

27. (a) There is abundant evidence to show that the first respondent purchased petrol and oil for the car at Sri S. G. Parthasarthy's bunk at Hunsur for cash between dates 13th November 1951 and 12th January 1952, that is, 24 gallons of petrol and 4½ gallons of oil for Rs. 109-7-0. The evidence of P.W. 122 H. M. Ismail Sheriff, P.W. 123 Viswanathan and P.W. 124 Salar Jung is relevant in this connection. P.W. 122 is an attender in the petrol bunk. P.W. 123 was formerly one of the attenders there till 2 months prior to his examination when he left it and P.W. 123 is a friend of both of them and he used to issue petrol at the bunk during their temporary absence. Exhibits MM, NN, PP and QQ are the cash bill books of the petrol bunk. The duplicates of the bills issued to the customers have been retained in them. The relevant duplicate bills relied on by the petitioner in respect of this car are Exhibits MM(1) NN(6) NN(7) NN(1) NN(2) to NN(5) PP(1) and PP(2) Exhibits NN(2) NN(3) PP(1) and PP(2) are in the writing of P.W. 122 and Exhibits NN(6) NN(7) NN(1) NN(4) and NN(5) are in the writing of P.W. 123. The daily sales registers maintained in the bunk are Exhibits RR and SS. Exhibits RR(1) to RR(8) and SS(1) and SS(2) correspond to most of the entries in duplicate bills exhibited (*Vide* the evidence of P.W. 122) Exhibit RR(1) is spoken to by P.W. 122 as being in the handwriting of one B. S. Seetharamiah who was in the service of the bunk but he gave it up. The writing in Exhibit MM(1) compares favourably with his writing in Exhibit MM(1) and it bears the initial "B.S." also and hence the original of Exhibit MM(1) must have been drawn up and issued by B. S. Seetharamiah. No doubt, in some of these bill books, some duplicate bills do not bear the registration number of the cars for which petrol was drawn on their originals but there is no suggestion in the course of cross-examination of P.Ws. 122 and 123 that the registration No. MY. 3173 X pertaining to P.W. 11's car must have been inserted in the duplicate bills exhibited recently to support the petitioner's case. All these duplicate bills and the daily sales registers have been kept in the regular course of business and there is no reason why the Proprietor of the bunk should resort to the device of getting the registration numbers of the cars inserted in these duplicate bills subsequently either to support the petitioner or to favour the second respondent.

(b) Exhibit QQ is another bill book of the bunk. Exhibit QQ(1) QQ(2) and QQ(3) are three duplicate bills. These are meant to show that petrol was drawn for MY 8487(Z) on 23rd January 1952 (Note: In Exhibits QQ(1) and QQ(3) the car number is given as 8487 Z and in Exhibit QQ(2) the number is given as 8487) Exhibit QQ(1) is in the writing of P.W. 122 and Exhibits QQ(2) and QQ(3) are in the writing of P.W. 124. P.W. 122 is definite that Exhibit QQ(1) relates to MY 8487 Z, so also is the evidence of P.W. 124 in relation to Exhibits QQ(2) and QQ(3).

28. Counsel for the first respondent argues that the first respondent never purchased any petrol in Hunsur bunk, he having purchased all the petrol he wanted in the petrol bunk of Messrs. V. D. Rajaram & Co., at the bus stand at Mysore for cash or credit. P.W. 122's evidence is very significant as he has made mention of the first respondent as having come to the bunk in car MY 3173 X and purchased petrol for it. In the face of all this oral as well as documentary evidence, it is futile on the part of the first respondent to deny that the car MY 3173 X was hired for his election.

29. There is also the evidence of some other witnesses who have seen the car being used for the first respondent's election. P.W. 35 K. V. Anantha Murthy and P.W. 75 P. Venkatasubbiah purport to have learnt from the first respondent himself when he had come to their places in this old car that he had hired it from Sri Srinivasa Thantri. Exhibit Q(8) is a receipt for payment of hire for 45 days for taxi MY 5322 Z admittedly engaged by the first respondent. He has used it till 24th January 1952 (inclusive) and hence the period of 45 days must have commenced from 11th December 1951. According to first respondent, this was the first taxi he had engaged for his election but he has produced two cash bills, Exhibits Q(17) and Q(18), for purchase of petrol and oil on 9th December 1951 and 10th December 1951 respectively. Sri O. V. Veerabasappa, Advocate for the petitioner argues that he must have made these purchases for car MY 3173 X as he had engaged the taxi MY 5322(Z) only 11th December 1951 as could be inferred from Exhibit Q(8). He had purchased large quantity of petrol that is, 26 gallons in the aggregate as per Exhibits Q(17) and Q(18). There was no necessity for him to purchase so much of petrol unless he was using some other car on the dates of Exhibits Q(17) and Q(18). Hence the petrol and oil purchased as per Exhibits Q(17) and Q(18) must have been for car MY 3173 X as contended by the petitioner's counsel.

30. 1st R.W. 71 is Chennappa, motor driver. He denies having driven the car of any one by name Sri Srinivasa Thantri for the first respondent for his election in place of P.W. 10. He is interested in the first respondent as he was eager to find out from newspapers whether he succeeded in the election and after finding out from them that he was returned, he did not try to find out from them as to who were returned from other Constituencies. Hence his evidence cannot be relied on.

31. Car MY 2636 X has been mentioned as having been hired in the list. Petitioner has adduced evidence about taxi car,—MY 2636 Z. P.W. 45 Sri Bhaseer Ahmed, is the owner of taxi car MY 2636 Z and another taxi MY 1021 X which has been admitted by first respondent to have been used for his election. P.W. 30 Krishnoji Rao is the driver of the vehicle MY. 1021 X. He has given its number wrongly as MY 1021 Z. P.W. 18 Syed Caffoor is the driver of taxi car MY 2636 Z. He has given the other taxi number wrongly as MY 1021 Z. Though P.W. 45 has given out that was P.W. 30 that sent some one to bring the taxi MY. 2636 Z for the first respondent's election. P.W. 30 has made bold to say that he could not state whether he sent any vehicle other than taxi MY 1021 Z (correctly speaking MY 1021 X) for first respondent's election. It is P.W. 18 that took the taxi MY 2636 Z to Periyapatna for first respondent's election for four days. Though P.W. 45 is positive that P.W. 30 collected the hire for taxi MY 1021 X Rs. 400 and that for the taxi MY 2636 Z. Rs. 100 at the rate of Rs. 25 per day and paid Rs. 500 to him, and P.W. 18 is also definite that he did collect the hire of both, P.W. 30 pretends not to remember that he collected anything else except the hire for taxi MY 1021 X. We rely on the evidence of P.Ws. 18 and 45 and hold that the taxi MY 2636 Z has been hired for first respondent's election.

32. There is no evidence adduced by the petitioner about the alleged free service of cars MY 3820 Z and MY 3063 Z as availed of by the first respondent, as mentioned in the amended list. The following item should have been included by the first respondent in his return of election expenses:—

1. Rs. 685 as balance of hire for MY 3173 X.
2. Rs. 240 probable value of free service of MY 1837 X.
3. Rs. 300 cost of second hand gear box for it and journey expenses of its driver to purchase it, etc.
4. Rs. 240 probable value of free service of MY 8878 Z.
5. Rs. 100 hire for taxi MY 2636 Z.

33. In the amended list, a stand is taken that the value of the full petrol drawn by the first respondent for the vehicles he had used for his election campaign had not been shown. The first respondent has omitted to include the value of petrol and oil he had purchased from Sri S. G. Parthasarthy's bunk at Hunsur for two of the vehicles MY 3173 X and MY 8487 Z, that is, Rs. 123-11-9, in his return of election expenses and he ought to have mentioned it therein.

34. As regards loud speakers in the list, two loud speakers are said to have been hired out for election propaganda by the first respondent and his agents, one from Radio House, Mysore, for hire of Rs. 150 and another from Raghuns, Mysore for hire of Rs. 250 (Vide amended list). The petitioner has led evidence

to prove the alleged hire of loud speaker only from Radio House and it is contended by his counsel that its hire of Rs. 120 as fixed ought to have been included in his return of election expenses. P.W. 13 Sri Vasudev is the Proprietor of Radio House, Mysore. He has produced his bill which contains duplicates of bills which he had issued to his customers, that is, Exhibit M. He speaks to having hired a loud speaker to Sri A. S. Kale Gowda, Proprietor of Shanthi Motor Service on 17th January 1952 as per Exhibit M(1) duplicate bill bearing his signature, Exhibit M(2) for 8 days from 17th January 1952 to 24th January 1952 (inclusive) for hire of Rs. 120 cash and to his having taken back from him Rs. 20 soon after payment of the hire for purchasing some battery cable wires etc., and having repaid it to him on 26th January 1952 as per Exhibit N(2) entry of that date in Exhibit N, P.W. 13's account book. Sri A. S. Kale Gowda was not known to this witness when he hired the loud speaker to him. But, as he was accompanied by some persons including the Government Bus Inspector as well as one taxi driver, Krishna whom he knew, he hired out the loud speaker. On 26th January 1952, he learnt from Sri A. S. Kale Gowda himself that the loud speaker was lying in the office of the Government Bus Inspector and as its return to him was overdue, he went and brought it back from that office with some parts missing. Sri A. S. Kale Gowda has been examined in the case as 1st R.W. 85. He admits Exhibit M(2) as his signature and adds that he hired out the loud speaker from P.W. 13 for one Sri Abdul Karim of Vellore dealing in beedies, and Sri Abdul Karim himself came with him and paid the hire for it to P.W. 13. According to him, Sri Abdul Karim advertised his beedies in the Chunchankatto jatra of 1952 but he could not say whether he used this loud speaker for that purpose. His attention was drawn in the course of cross-examination to the entry in Exhibit M(1) "supply of loud speaker in car for election purpose from 17th to 24th Jan. 52" and he has admitted that he finds it noted so. In re-examination, he is not in a position to explain why it has been so mentioned in Exhibit M(1). He has later stated that he did not get it corrected as he did not notice it at the time of hire. Sri Abdul Karim is a big merchant, paying income tax and maintaining accounts (*Vide* his evidence). If the loud speaker was hired for him by 1st R.W. 85 and he had paid the hire for it, there would have been an entry in his accounts and the first respondent should have summoned production of his account book and had any such entry exhibited. In the absence of such evidence, it has to be held that the loud speaker was hired by 1st R.W. 83 for election. Some witnesses for the petitioner, P.Ws. 75, 82 and 84 speak to his canvassing for the first respondent, P.W. 75 refers to the presence of 1st R.W. 85 in his hotel along with the first respondent when both of them asked him to vote for him. Hence he is a general canvassing agent of the first respondent, though he was not his agent by virtue of any appointment in writing. In *Norwich* (2 O'M & H Page 38) Keating J has observed that to establish general agency, it must be proved that the candidate must be personally aware of one acting as his agent though he has not personally engaged him, and if he does not take exception to his acts, he will be bound by them. In other words, such a person becomes the candidate's general agent by implication and acceptance.

35. Petitioner's counsel contends that he (1st R. W. 85) was one of the main organisers of Kurubara Vidyabhivruddi Sammelana as his name is found mentioned in Exhibit XV as Chairman (evidently of the Reception Committee) 1st R.W. 85 does not identify himself as Chairman of the Reception Committee as he makes it appear that that A. S. Kale Gowda is more aged than himself, he being 55 years old. Some witnesses for the first respondent also had tried to make out that A. S. Kale Gowda, son of Sambu Gowda of Arenahalli, aged 55 years, was the Chairman of the Reception Committee and not 1st R.W. 85. It was easy for the first respondent to have summoned the said A. S. Kale Gowda and placed his evidence before the court as to what part he played at the Sammelana. He would have certainly done so if he was the Chairman of the Reception Committee. Hence 1st R.W. 85 was the Chairman of that Committee and he must have taken a prominent part in the activities of the Sammelana.

36. That a loud speaker was fixed to the car MY 6878 Z on or about 17th January 1952 has been spoken to by P.W. 5 Yousuff, driver of the car. P.Ws 24, 25, 26, 35, 36 and 37 have all referred to the use of loud speaker fixed to a car used either by the first respondent or his agents for his election propaganda subsequent to 17th January 1952. Hence P.W. 13's loud speaker must have been used for the first respondent for his election, 1st R.W. 85 having hired it for him for the purpose. P.Ws 6, 10, 27, 38, 40, 41, 67, 74, 75, 109 and 110 speak to the use of loud speakers fitted in cars, used either by the first respondent or his canvassers even prior to 17th January 1952. This loud speaker could not be the loud speaker hired by 1st R.W. 85 from P.W. 13 on 17th January 1952 but some other loud speaker. As to when the first respondent got this loud speaker for his use, evidence is lacking on the petitioner's side.

37. Hence on account of the loud speaker of P.W. 13, a hire of Rs. 120 should have been included by the first respondent in his return of election expenses.

38. In the list, as many as 27 cycles are said to have been engaged by the first respondent and his agents for the election propaganda, the hire itself having come up to Rs. 339 in the aggregate. Out of them, 7 cycles are alleged to have been hired from M. G. Seetharamiah, cycle dealer, Mysore, from 12th January to 24th January 1952, ten from Lakshminarayana Stores and Cycle Mart, Mysore for the same period, five from Mohamed Peer of Bettadapur and five from Ibrahim, cycle dealer in Kamplapur. Hire alleged to be due on each item is set out as against it. There is no evidence on the side of the petitioner for hire of any cycles from Ibrahim. 1st R.W. 65 Sri G. R. Rangaswamiah alias Rangapapiah has been designated by the petitioner as the owner of Lakshminarayana Stores, Mysore, in his witness list. He is the father-in-law of 1st R.W. 66 Sri G. Seetharamiah referred to as Sri M. G. Seetharamiah by 1st R.W. 65. It is P.W. 27 that has referred to the alleged hiring out of cycles by Sri G. S. Rame Gowda from the shops of Sri Seetharamiah and Sri Rangaswamiah evidently Rangapapiah. According to P.W. 27, on 11th January 1952, he, the first respondent, M. Lakkappa and Kari Gowda came to Mysore from Haleyr and were stopping in Sri Rame Gowda's house at Mysore and the next day, Sri Rame Gowda got them 15 cycles from the cycle shops of Sri M. G. Seetharamiah and Ramaswamiah evidently Sri Rangapapiah. Later this very witness has mentioned that two peons of Sri Rame Gowda's house took him and Lakkappa to the cycle shops and got them the cycles. It is most improbable that, even without chits either from Sri Rame Gowda or the first respondent, these persons parted with their cycles when peons of Sri Rame Gowda approached them. It is further improbable that even they did not make a note of such hiring out of cycles in their account books. The petitioner has placed evidence on record to show that such cycles were conveyed on the tops of Express Bus and Prabhudeva Bus from Mysore to Hosur on 13th January 1952. P.W. 32 Mohamed Ghouse is the Driver of the Express Bus which plies between Mysore and Konanur. He purports to have conveyed 10 or 12 cycles on the top of the bus and unloaded them at some Hotel at Hosur at the instance of Sri G. S. Rame Gowda at the time of Chunchankatte jatra of 1952, some one who was in charge of the cycles having got into the bus, the same having been meant for the Assembly election from Periyapatna Constituency. P.W. 32's evidence cannot be believed as, on that particular day, he had loaded the bus to its full capacity with passengers and had much luggage. Hence he could not have taken so many as 10 or 12 cycles on the top of the bus. P.W. 34 Somasekhar is driver of Prabhudeva Bus which plies between Mysore and Periyapatna Via Hosur. In examination-in-chief, he has given out that the first respondent and 3 or 4 boys loaded 7 or 8 cycles in the bus at Mysore for transport to Hosur three or four days before the Chunchankatte jatra of 1952 but in cross-examination, he has given a go-bye to a portion of this version by saying that the first respondent had not come to the bus stand but, from the boys, he learnt that it was he that wanted these to be taken to Hosur. Hence he too is not a straightforward witness.

39. P.W. 117 Lingappa is the conductor of Basaweswara Bus plying between Bettadapur and Mysore Via Hosur and P.W. 118 Thammiah is the driver of that Bus. Both the witnesses say in one voice that 8 days after the date of the Assembly election from Periyapatna Constituency, Lakke Gowda loaded the top of the bus with 10 or 12 cycles at Hosur for delivery to Sri Rame Gowda, Government Bus Inspector at the bus stand, Mysore and they were so delivered to him at the stand. Though P.W. 117 does not refer to the name of the first respondent in his deposition, P.W. 118 showed his anxiety to support the petitioner by giving out that Lakke Gowda asked him to inform Sri Rame Gowda that it was the first respondent that sent him the cycles. No one who books a luggage of 10 or 12 cycles for being carried on a bus would be so unwise as not to obtain a luggage ticket for them. Whereas P.W. 118 speaks to such luggage ticket having been issued to Lakke Gowda by P.W. 117 P.W. 117 denies it. This is a material discrepancy. 1st R.W. 65 Sri G. R. Rangaswamiah alias Rangapapiah and 1st R.W. 66 Shri G. Seetharamiah, the son-in-law of 1st R.W. 65 have made it clear that they have not hired out any cycles from their shops for the first respondent for the Assembly election. 1st R.W. 65 is a staunch Congress worker and all the ten or fifteen cycles he had in his cycle shop were being used for propaganda work on behalf of Congress candidate for election to Legislative Assembly from Mysore City North Constituency. 1st R.Ws. 65 and 66 had been cited by the petitioner as his witnesses but he has not examined them. No reason has been given by the petitioner in his evidence as to why he gave them up. 1st R.W. 66 is not in the habit of hiring out cycles for election purpose for fear that they might be damaged.

40. 1st R.W. 11 M. Lakkappa is evidently the person referred to by P.W. 27. He denies that he knew Sri G. S. Rame Gowda, 1st R.Ws. 65 and 66, and goes a step further by asserting that, at the instance of the petitioner, he was moving about on cycle and canvassing for the second respondent. It is not likely that he canvassed for the second respondent at the instance of the petitioner as he had left the Gurukula High School in October 1951 and joined Maharaja's High School at Mysore. His evidence does not go entirely in support of the case of the first respondent as his attention was not drawn to the alleged loading of cycles on Basweswara Bus and Prabhudeva Bus at Hosur.

41. Hence there is no convincing proof that the cycles were hired out for the first respondent's election from 1st R.Ws. 65 and 66 through Sri Rame Gowda.

42. As per evidence of P.Ws. 24, 27, 28, 35, 36, 37, 41, 43 and 49, some boys were moving about on cycles canvassing for the first respondent. 1st R.W. 86, the first respondent denies that he ever engaged any boys to canvass for him on cycles. In the face of their evidence, it cannot be true.

43. P.W. 46 Mohamed Peer is a cycle shop owner at Bettadapur. He knew Sri Cheluviah, 1st R.W. 79, who was then a teacher in the High School at Bettadapur and he was visiting his shop. P.W. 46's evidence stands unassailed in cross-examination. When some persons came to hire out cycles from him for the first respondent for his election, he asked them to bring some one whom he knew and they brought 1st R.W. 79 and on his recommendation, he hired out some cycles to them for a month prior to the date of election and later three more cycles for the first respondent for ten days prior to the election—at the rate of Rs. 1 per cycle per day. When the cycles were returned to him after the election, the hire due to him came up to Rs. 90. On a calculation, it could be easily arrived at that, in the first instance, he hired out two cycles. He comes out with the details as to how he recovered Rs. 80 in full settlement of the dues. Some days after the election, he met the first respondent at Bettadapur and recovered from him Rs. 40 he having promised to send him the balance in 4 or 5 days through Sri Lakkappa (evidently Sri N. M. Lakkappa) and some days hence, Shri Lakkappa came to the shop of P.W. 46 B. N. Subbaraya and P.W. 46 went there and demanded him for the balance and he wanted some concession to be shown to him and he remitted Rs. 10 out of the balance as recommended by P.W. 47 and obtained from him Rs. 40. P.W. 47 also speaks to the remission and the payment, P.W. 48 B. Lakshminarayana Rao speaks to the hire of cycles from P.W. 46 through Sri Cheluve Gowda (1st R.W. 79) for the first respondent in his shop. 1st R.W. 79 denies that he ever recommended to P.W. 46 to hire out cycles for use at the first respondent's election. He is a friend of the first respondent and he must have come to support his case. 1st R.W. 83 (Sri N. M. Lakkappa) denies that he got cycles hired out from the shop of P.W. 46 for the first respondent's election with the help of 1st R.W. 79. He had dealings with the first respondent's brother in tobacco and he admits that he had supplied him with 450 maunds of tobacco worth Rs. 5,000. He does business in tobacco both in his native place and at Vellore. He knows the first respondent for quite a long time since he was studying in the 1st year class in the High School having taken up lodging at Kurubara Hostel—at Mysore. There is no ill-feeling between him and P.W. 47 he also having supplied him with tobacco year before last and this year. Thus he is purposely denying the hire of cycles from P.W. 46 for the first respondent's election. 1st R.W. 44 Malle Gowda's evidence is got up for the occasion. It is to the effect that 1st R.W. 79 did not hire out cycles from P.W. 46's shop for the first respondent or his agents. Sitting at his stall by the side of P.W. 46's shop from morn till evening, he may not be watching the persons visiting his shop daily to hire out cycles.

44. The sum of Rs. 80 hire paid for the said five cycles to P.W. 46 should have been included by the first respondent in his return of election expenses.

45. In respect of the first respondent's personal expenses, exact amount is not ascertainable. Exception is taken for its omission in his return of election expenses. It is pointed out by petitioner's counsel that, though 1st R.W. 86 has admitted that he came to Mysore a day prior to his filing his nomination paper and stayed in Mysore till the scrutiny was over and left for his village the next day and was messing during his stay at Mysore at Indra Bhavan, he has not set out to and fro journey charges and boarding charges as his personal expenses in his return. No doubt, this is so; but the omission affects the correctness of the return.

46. (a) 1st R.W. 86 has admitted that he had engaged his three brothers, his sister's son and six boys to do canvassing for him. Petitioner's counsel has stressed that he should have mentioned their expenses in the course of election campaign in his return of election expenses. Indeed, in the list, the petitioner has

taken exception to the omission of expenditure he had incurred on his several agents who had toured in many cars and on cycles to the tune of Rs. 5,000 in his return of election expenses; but now at the stage of arguments, he has confined it in respect of these ten admitted workers and some others who are alleged to have taken meals and tiffin in P.W. 3 Bhadrach's Hotel. P.W. 91 Sri Jayaram Bhatta is the Proprietor of Modern Cafe in Periyapatna. He has passed Exhibits Q7 and Q11 in favour of the first respondent. He wants one to believe that, as first respondent wanted them for some purpose, he signed them after D. Karlyappa wrote them, and that, for the meals and tiffin taken by first respondent and some others during the election, he was paid cash then and there, exceeding Rs. 700 or Rs. 800. He is a literate witness and it is not probable that he passed Exhibits Q7 and Q11 as desired by the first respondent. Hence they represent genuine transactions. There is 1st R.W. 86's evidence that his brothers and sister's son were messing in Jayaram Bhatta's (P.W. 91's) hotel at times like himself. He has produced voucher Exhibit Q11 for it.

(b) It has also been contended by the counsel for the petitioner that the first respondent has failed to include in his return of election expenses the hotel charges incurred on account of several canvassers of the first respondent having taken meals and tiffin in P.W. 3 Bhadrach's hotel at Chunchanakatte jatra in January 1952 when they were canvassing for him. There is no denial of the fact that P.W. 3 who is running a permanent military hotel at Mysore had opened a Military Hotel temporarily at the jatra under licence, Exhibit E. According to P.W. 3, it was Sangarasetthalli Mari Gowda, Kempe Gowda and Lakkappa that were canvassing votes for the first respondent and used to bring several other canvassers to his hotel at Chunchanakatte jatra and they used to take meals and tiffin there in the account of the first respondent and the bill came up to Rs. 340 and he was able to recover from the first respondent a sum of Rs. 60 and from Lakkappa sums of Rs. 50 and Rs. 60 and the balance of Rs. 170 still remains unpaid. To recover this balance, he purports that he had to go about from place to place and see not only the first respondent but also others and in that connection, he had incurred travelling expenses of Rs. 122 and the first respondent paid him Rs. 100 towards it at his village and hence balance of Rs. 22 is still due on this account. He got a notice of demand issued to the first respondent through P.W. 2 Sri P. M. L. Boriah, Advocate, Mysore, for the said sums of Rs. 170 and Rs. 22 but it was returned to him as having been refused by the first respondent. Exhibit A(2) is the legal notice. No suit was brought by P.W. 3 against the first respondent for the recovery of these sums and he has given some reasons also why he has put off filing the suit. It is not for us to go into these reasons as we have only to find out whether the first respondent has incurred this liability.

47. Several witnesses have spoken to the fact that Sangarasetthalli Mari Gowda, Kempe Gowda and M. Lakkappa, 1st R.W. 11 had canvassed for the first respondent for the Assembly election. So far as Sangarasetthalli Mari Gowda is concerned, he has taken a very prominent part in canvassing for the first respondent as several witnesses for the petitioner have deposed about it. For example vide the evidence of P.Ws. 3, 6, 26, 27, 39, 40, 41, 49, 52, 53, 63, 85, 101, and 105. Petitioner's witnesses Nos. 3, 26, 27, 41, 52, 53, 63, 85, 101 and 105 and several other witnesses for the petitioner have referred to the canvassing of Kempe Gowda for the first respondent and P.Ws. 3, 27, 39, 40, 41, 44, 43 and 84 to that of M. Lakkappa. That these are all general agents of the first respondent is also clear from the fact that most of them have referred to his having accompanied them while canvassing and they were canvassing for him. Some letters were produced by P.W. 3 as having been secured by him for collecting the balance of dues the first respondent owed his hotel on account of his canvassing agents. Exhibit B is a letter purporting to have been addressed by the first respondent to 1st R.W. 69 Sri S. H. Thammiah on 23rd January, 1952 (Note: His name is referred to as H. S. Thammiah by P.W. 3 and some other witnesses for the petitioner. This is a mistake). 1st R.W. 86—first respondent denies that he ever wrote Exhibit B in the presence of P.W. 3 and gave it to him. It is mentioned in Exhibit B that he and Sri S. H. Thammiah opened a joint account in the hotel at the jatra and that the first respondent has paid his quota of dues of Rs. 170 and as he has learnt that 1st R.W. 68's people had not paid his quota, he was sending this letter to him. That the first respondent is in the habit of signing differently at different times is evident from the fact that there is difference in his signatures in Exhibits R(1) Q and Q(14). The signature to Exhibit B tallies with the signatures on the reverse of Exhibit Q(20) purporting to be those of the first respondent and he alleges that the latter signatures are forged ones, and he came to know the name of P.W. 3 only when the petitioner's witness' list was filed. There is nothing on record to suggest why P.W. 3 should come and depose falsely against him and concoct not only Exhibit B but also Exhibits C, C(1) and D. According to him, he handed over Exhibit B to Sri S. H. Thammiah who was the

candidate for the election to the Assembly from Krishnarajanagar Constituency and he returned Exhibit B to him, referring him to the first respondent and when he went back to the first respondent, he asked him to bring a letter from him stating that he had not paid any amount to him and thereafter he approached Sangarasetthalli Mari Gowda who addressed the letter, Exhibit C to Sri Thammiah that he might give a suitable reply to the first respondent and when he handed over the letter to him, he referred him to Sri Balaram Gowda, his brother-in-law as having been in charge of the canvassing work for him at the jatra and returned to him that letter, and Sri Balaram Gowda addressed the letter, Exhibit C(1) on 18th February, 1952 to the first respondent stating that he had made arrangement for the meals of the canvassers of Sri S. H. Thammiah at the jatra in some other place. Exhibit D purports to be another letter he obtained from Kempe Gowda to the first respondent, urging him to pay his dues and it is in his evidence that these letters also were returned to him by the first respondent after perusal, he having promised to pay him the dues but put it off. In cross-examination, a suggestion has been made to the witness whether Exhibits C, C(1) and D were not returned to the witness by the persons to whom they had been addressed respectively and he has denied the suggestion. From the suggestion, it could be inferred that the first respondent was not disputing that these letters had come into existence. P.W. 111 Sri M. S. Kote Gowda is President of Mirle Municipality. He has produced Exhibit KK, Minute Book of Proceedings of the Municipality. Formerly Sri M. R. Balaram Gowda was Vice-President of the Municipality and he has received two petitions and the signatures he has affixed on them have been identified by P.W. 111. These are Exhibits LL and LL(1). At present, he is only Municipal Councillor of Mirle Municipality and P.W. 111 has spoken to his signatures Exhibits KK(1) to KK(9) to proceedings recorded in Exhibit KK, and identified Exhibit C(1)(a) as his signature. Exhibit LL and LL(1) tally with Exhibit C(1)(a) letter by letter. Exhibits KK(1) to KK(5) also tally with Exhibit C(1)(a) except for the letter (may) in them we find (way) in Exhibit C(1)(a) as in Exhibit LL and LL(1). All these point to the fact that Sri M. R. Balaram Gowda is in the habit of signing in two different ways, at times like Exhibit LL and LL(1) and at times like Exhibits KK(1) to KK(5). Thus, there is no exhibit that Exhibit C(1) is the letter that was addressed by him to the first respondent.

48. P.W. 121 K. Puttasubbliah is the Shanbogue of Sangarasetthalli and two other villages. Sangarasetthalli Mari Gowda is the Chairman of the Village Panchayet, Sangarasetthalli. He swears that he is acquainted with the writing of Sangarasetthalli Mari Gowda and Kempe Gowda who was the Patel of that village. Kempe Gowda was member of the Village Panchayet also before Sangarasetthalli Mari Gowda became the Chairman of the Village Panchayet. The witness himself has recorded some of the proceedings of the Village Panchayet, in Exhibit L. Minute book of proceedings of the Village Panchayet, for example, Exhibit L(3). As per this witness, Exhibits L(1) and L(2) were recorded by Sangarasetthalli Mari Gowda in his presence. He was able to read a portion of Exhibit C and not the rest of it. He identifies that Exhibit C is in the writing of Sangarasetthalli Mari Gowda, under his signature. The writing in Exhibits L(1) and L(2) compare favourably with that in Exhibit C. As pointed out by the witness, the letters are linked together in Exhibit C though they have been separately written in Exhibits L(1) and L(2). Hence Exhibits B, C, C(1) and D have been proved.

49. For all these reasons the claim in Exhibit A2 for Rs. 192 should have been included in Exhibit Q as expenditure incurred on account of the canvassers of the first respondent.

50. In the list, it is pleaded that full printing charges incurred by the first respondent has not been shown in his return of election expenses but only a portion of it has been mentioned. He has produced bills, Exhibits Q4 and Q13, which comprise details shown in Exhibits Q14 and Q15, to show the printing of hand bills and cards for the election. It has not been proved by the petitioner that he has incurred more expenses by way of printing charges than what is mentioned in Exhibits Q4 and Q13.

51. Objection is also taken that the first respondent has not shown expenses incurred by him on his polling and other agents. Exhibit Q7 is the receipt for supply of meals from Jayaram Bhatta's (P.W. 91's) hotel to polling agents at the polling booths. There is no evidence as to expenses incurred by him on his canvassers.

52. It is contended by Petitioner's counsel that, though the first respondent (1st R.W. 86) had set apart Rs. 4,500 out of his joint family funds for his election, he has failed to mention in his return of election expenses Rs. 1,000 and Rs. 500

alleged to have been taken by his brother, Dodda Appaji, out of it, with his permission, for purchase of bullocks and some amount for expenses—for their joint family. It is contended by him that he has not maintained any account books to show his election expenses and if he had maintained them in the regular course of business, then he would have noted the payments in the return when they were made, with reference to the entries in it. First respondent has constituted himself as his own election agent and under Section 44 of the Representation of the People Act, 1951, it is the duty of the election agent to keep separate and regular books of account, with entries giving particulars of expenditure incurred for the election. Section 76 of the Act enjoins the lodging of return of election expenses signed by the candidate and his election agent within the time prescribed, under Rule 112 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Rule 111 of the rules, lays down the manner in which the books of account have to be kept, showing all paid and unpaid items of expenditure incurred incidental to the election. Reading Section 44 and Rule 111 together, it is clear that account books of election expenses must be kept regularly. It is pointed out by Sri O. Veerabasappa that, when he called upon the first respondent to produce his accounts of election expenses by means of Interim application No. 1, he has filed a statement on 26th November, 1952, that he is not able to lay his hands on his account book of election expenses and he is searching for it and will produce it if traced. At his request, the Tribunal had asked his counsel often as to whether it was found and he represented that his client was still continuing his search for it. Admittedly there is a criminal case for alleged smuggling of timber pending against the first respondent in the City Magistrate's Court, Mysore and he as 1st R.W. 86 has asserted that the Police had searched a portion of his house in Muddenahalli where he was living and they might have taken away his account book, counterfoils of his petrol indents and other documents he had kept on the top of his almirah in that portion of the house. The alleged search is said to have taken place two months prior to the service of the notice of the election petition on him. He also wants one to believe that he came to the conclusion that the account book, counterfoils of petrol indents and other documents had been taken away by the Police, soon after he entered the house 4 or 5 days after the search when he was informed by his mother-in-law who is living in the other portion of the house about it. If that had been so, then he should have informed his lawyer about it before his objection statement to the election petition was prepared and filed by him as he wanted all the material papers including such account book, to prepare it. If he missed the account book and other papers 4 or 5 days after the search alleged, then nothing prevented him from informing his counsel about it immediately instead of getting it submitted by him often to the Tribunal that he was still searching for it. But he makes it appear that he informed him that the account book was taken away by the Police only two months prior to his examination. These versions of his cannot at all be reconciled. If a search had been conducted by the Police, they would have prepared a search list showing all the documents, if any, seized in the course of it and the petitioner would have obtained a copy of it from the records of the criminal case. Criminal Revision Petition No. 155 of 1953 is pending on the file of the High Court in connection with the criminal case and the petitioner's counsel has produced a copy of order on his application in the Criminal Revision Petition for copy of house search lists filed in the Criminal Case, Exhibit FFF, showing that no house search lists are forthcoming in the records. On this, he contends that the portion of the house in which the first respondent was living in Muddenahalli was not searched by the Police at all. When he filed Exhibit FFF, the first respondent should have taken care to see whether any house search list had been filed by the Police in the records of the criminal case. If so, he should have obtained a copy of it and filed it and convinced the Tribunal that the election account book was also seized by the Police. In the absence of production of any such copy on his part, an adverse inference has to be drawn against him that he did not maintain any account book of election expenses and even if he had maintained it, he must have suppressed it as the entries in it might go against him (Vide Amritsar City Muhammadan Constituency Punjab Legislative Assembly Sheikh Mohamed Sadiq Vs. Dr. Saifud-Din Kitchlew) reported in Indian Election Cases 1935 to 1951 by Sudansu Bhusan Sen and Madan Gopal Poddar at Pages 50 and 51 in their textbook on Indian Election Cases, 1951.

53. The omission on the part of the first respondent to enter payments made by him to Dodda Appaji for his joint family from the said sum of Rs. 4,500 also goes to the root of the correctness of his return of election expenses.

54. (a) The weighty observations of Cave J in Stepney (Rushmere Vs. Issacson, Day 116, 4 O'M & H 178) as to how the accounts of election expenses should be

maintained by the election agent are well worth perusal and are reproduced thus:—

"He ought to keep a cash book in which everything should be set down in chronological order so that it can be told by looking at the cash book exactly when each sum was spent, how it was spent and to whom it was given. I think he would be well advised also if he had an order book, with counterfoils which should be numbered consecutively, and wrote down every order upon the form and upon the counterfoil so that by an inspection of the book one could at once see that all the counterfoils were there, and that everything that had been ordered was put down in its place, and on the counterfoil that belonged to it. Lastly he would be wise to have a receipt book made up in a similar form, and to take a receipt from the persons to whom he pays any money upon one of these forms, using them also again consecutively and in chronological order."

The learned Judge has concluded his observations by saying that then only the election agent can say with confidence before the Election Tribunal 'Those books represent everything I have ordered, everything I have spent, everything I have paid'.

(b) When an election agent has maintained his cash book, receipt book and order book in the manner indicated supra, then a very strong presumption about the genuineness of the entries therein can be drawn in his favour.

55. It is urged by the first respondent's counsel that he was not bound to preserve his account book of election expenses after submitting his return. But in a leading case (*East Dorset, 6 O' M & H 37*) it has been held that the election agent must preserve such account books and other connected papers till the disposal of the election petition. These have to be placed before the Election Court for scrutiny.

56. There is thus cogent evidence that the first respondent has exceeded the maximum limit of election expenses, Rs. 5,000 fixed for the Assembly election.

57. For the foregoing reasons, our finding on the 6th issue is that the first respondent has incurred the legitimate expenses as held in the preceding paragraphs on his election and had failed to set them out in his return of election expenses and if he had mentioned them in the return, it would have exceeded the maximum limit of election expenses for the Assembly election and that on the alternate issue is in the negative. The submission of this incorrect return amounts to a minor corrupt practice under Clause 4 of Section 124 of the Act.

58. **Bribery.**—Particulars of several items of bribery have been given in the amended list.

First item.—It is an alleged offer of Rs. 4,000 by the first respondent to the members of the Managing Committee of the Gurukula High School at Chunchanakatte evidently for its construction, if they influenced votes in his favour at Chunchanakatte and surrounding villages. In support of it, petitioner has examined P.Ws. 82 to 85. By way of rebuttal, first respondent (1st R.W. 86) and 1st R.Ws. 1 to 3 have been examined. At Chunchanakatte, there is Gurukula Ashram which was founded by Sri H. K. Puttanna for the uplift of Vokkaligars and other communities. There is High School attached to the Ashram and there was a Managing Committee for the High School at the time of the general election with P.W. 82 Linga Gowda as the Chairman and P.W. 83 Gowdiah alias Kulle Gowda, P.W. 84 K. Rame Gowda, P.W. 85 K. Venkate Gowda, petitioner and others as members. Petitioner was also the Secretary of that committee. There is a Seva Samithi in charge of the affairs of the Gurukula Ashram and in applying for a grant to the District Board, Mysore, for construction of the High School building, it had nominated the petitioner as Contractor for the High School construction by means of a resolution. On 18th July, 1951, the Government was pleased to approve the grant of Rs. 8,000 as resolved by the District Board, Mysore, to the Ashram towards the cost of construction of the High School building. The resolution was passed by the District Board some months previously. Exhibit XVIII is a copy of the Government order approving the grant. The construction of the High School building is still incomplete. For purpose of general election, Chunchanakatte Hobli which is in Krishnarajanagar Taluk has been tacked on to Periyapatna Constituency. Petitioner has tried to prove that the first respondent has approached P.Ws. 82 to 85 to offer them money for construction of the High School if they secured votes for him in Chunchanakatte and surrounding villages. The High School is functioning since 1949. The Managing Committee of the High

School has requested the Government to take over its management as it was unable to run it but the Government referred it to the District Board, Mysore, and the District Board, Mysore, took over its management on 7th June, 1952 (Vide evidence of 1st R.W. 3 S. K. Thammiah) with the second respondent, President of the District Board as the Chairman of the Managing Committee. The incident complained of is said to have taken place on 1st January 1952 at the verandah of Chunchankatte High School in the afternoon. The right of collection of manure deposited at Chunchankatte jatra of 1952 was auctioned by the Sub-Division Officer, Mysore, at Krishnarajanagar on 18th December, 1951 in four blocks. 1st R.W. 3 S. K. Thammiah, Dodda Narase Gowda, Chairman Venkate Gowda P.W. 85 and Chikka Venkate Gowda have purchased the right to collect such manure in blocks 1 to 4 respectively for Rs. 2,370, Rs. 1,000, Rs. 1,010 and Rs. 350 as per sale lists, Exhibits XVI to XVI(c) respectively (produced by 1st R.W. 62, Sri K. Venkata Rao, Clerk, Sub-Division Office, Mysore). Petitioner's counsel argues that P.W. 85 had purchased the right along with P.Ws. 82 to 84, in relation to the third block as per Exhibit XVI(b). There is unequivocal evidence of P.W. 85 itself that he purchased the right evidently in respect of the third block on his own behalf and on behalf of three others. P.W. 83 is clear on the point that those three others were himself, P.W. 82 and P.W. 84 and P.W. 82's version that the auction stood in the name of one of them though they had purchased the right jointly goes also in support of the petitioner's contention. It has been made out from the evidence of these witnesses that they visited the spot on 1st January, 1952 to divide the block as among themselves and came to the conclusion that it was feasible to divide the manure after deposit on it, among themselves, and thereafter they all came and sat in the verandah of the High School. It is alleged by them that then a car arrived there and the first respondent got down from the car and made an offer of Rs. 4,000 to them for the construction of the High School building, if they all secured votes for him in that locality and in the neighbourhood and when P.W. 82 took him to task that it amounted to a bribe, he wanted it to be treated as donation and when he still persisted that it amounted to a bribe, he left the spot, saying that he was going to Mysore for the election of Sri T. Mariyappa the next day. At this meeting, he is said to have reminded P.W. 82 of his request to him and petitioner at the Ashram some days previously to have his candidature supported by its authorities.

59. The point now is whether the offer is true. There is a definite suggestion in the cross-examination of P.W. 84 as to whether Venkataramane Gowda, one of the members of the Managing Committee of the High School, was present when they were at the Verandah of the High School when the first respondent came there. He had denied his presence. From the suggestion, it could be inferred that the first respondent did go to the High School and meet these witnesses there.

60. Petitioner's counsel also relied on another suggestion made to him as P.W. 107 as to whether, at the former election, candidates used to make donations to Gurukula Ashram for securing votes through it and whether Sri Bore Gowda thus donated a sum of Rs. 200 to it when he stood for election to the Mysore Representative Assembly. P.W. 107 denies the truth of the suggestion. It has to be inferred from this suggestion that the first respondent was aware at least of an attempt on the part of some candidates for election to public bodies formerly to make donation to the Ashram for obtaining votes through its influence.

61. 1st R.W. 2 Narasimhiah is brother of P.W. 85. He denies that his brother P.W. 85 had purchased the right to collect manure in the third block at Chunchankatte jatra of 1952 in partnership with P.Ws. 82 to 84 and asserts that he himself was supervising the collection of manure in the jatra for P.W. 85. It has not been suggested in the cross-examination of P.W. 85 whether 1st R.W. 2 was thus supervising the collection of manure for him. Through 1st R.Ws. 1 and 3 it has been sought to prove that P.Ws. 82 and 83 left Chunchankatte by bus for Mysore in the morning of 1st January, 1952 to witness the election of Sri H. C. Dasappa for Parliament, at that place and 1st R.W. 1, P. W. 107 and 1st R.W. 3 went to Mysore from Chunchankatte in the evening of 1st January, 1952 also by bus for the purpose and met P.Ws. 82 and 83 at Nanjarabad choultry at Mysore soon after they alighted there. According to 1st R.W. 1, there was a prior arrangement between him and the petitioner to wait at Chunchankatte High School to go to Mysore in the afternoon of 1st January, 1952 for witnessing the election but 1st R.W. 3's testimony is that, some days prior to that date, P.W. 83 desired that they might go to Mysore on 1st January, 1952 for the purpose. Both 1st R.Ws. 1 and 3 depose that they and petitioner left for Mysore in the afternoon of 1st January, 1952 and met P.Ws. 82 and 83 there as contended for the first respondent. 1st R.W. 3 purports that some days prior to

1st January, 1952, at Chunchankatte shandy, he met the other purchasers excepting P.W. 85 and they decided that they should meet at Chunchankatte High School at 3 P.M. on 1st January, 1952 to divide the blocks and he and Dodda Narase Gowda among the purchasers asked 1st R.W. 2 to send his brother to the High School on that date for the division and he went accordingly at 3 P.M. on 1st January, 1952 and found that the other purchasers were absent. 1st R.W. 2 has corroborated 1st R.W. 3 by saying that he was asked by the purchasers excepting P.W. 85 to send him there on 1st January, 1952 and adds that P.W. 85 sent him to Chunchankatte on that date as he was laid up with fever since some days previously and he went there at 10 A.M. or 12 noon and found none of the other purchasers were there. If 1st R.W. 3 and Dodda Narase Gowda had sent word with him that P.W. 85 might go to Chunchankatte on 1st January, 1952 at 3 P.M., then 1st R.W. 2 would not have gone there at 10 A.M. or 12 noon. Hence the alleged meeting of the purchasers of the right to collect manure on different blocks referred to by 1st R.W. 3 has been thought of to counteract the case put forward by the petitioner. It is also worthy of note that it was not suggested to P.W. 85 in his cross-examination as to whether he was laid up with illness on 1st January, 1952, nor was it suggested to him as to whether 1st R.W. 2 was deputed by him to supervise the collection of manure in his block. It has not been suggested to P.Ws. 82 and 83 whether they were not at Mysore on 1st January, 1952 since that morning. It has not been suggested even to P.W. 107 whether he had been to Mysore in company with 1st R.Ws. 1 and 3 in the afternoon of 1st January, 1952 and found P.Ws. 82 and 83 at Nanjarabad Choultry that evening. Hence the evidence of 1st R.Ws. 1 to 3 is not entitled to any weight.

62. 1st R.W. 86 denies that he ever offered Rs. 4,000 to the members of the Managing Committee of the Gurukula High School for construction of the school building if they secured votes for him. P.Ws. 82 to 85 have given consistent evidence that he offered them Rs. 4,000 for construction of the High School building if they helped him in getting votes. Their version is probabilised by the fact that the first respondent must have met them having known that some persons who stood as candidates at the former election had offered some donation to the Ashram for securing votes in that locality though he as 1st R.W. 86 has averred that only 7 or 8 months prior to his examination, he had been to Chunchankatte High School with Sri H. Siddaveerappa, Minister to the Government of Mysore and not before that at any time.

63. In England, in several election cases, it has been stressed that elections to Parliament have never been "intended to dry up the founts of charity". In order to show his public spirit, the candidate for election to Parliament is expected to render financial assistance to movements, such as, Child welfare, Boy scouts and Girl Guides, and to clubs rendering assistance to the unemployed and ex-soldiers. They are even expected to render some help to the poor and needy. Cases have arisen in England wherein it has been found difficult to find when charity has ended and bribery has begun. One of the leading cases on the point is *East Nottingham* (1911, 6, O' M & H 300). In that case, it has been found that the election agent of the candidate who was returned had relieved the necessity of several poor people in the Constituency during the period of election, and the candidate made a clear admission that it was meant to win popularity. The election has been held to be valid, as the candidate had directed that all applications for help received when the election was imminent should stand over for the present.

64. The election at *Kingston-upon-Hull* (6, O' M & H 374) was set aside on account of distribution of sweets to children as well as coal to poor people on the eve of election. Ridley J has observed thus:

'Now assume for the moment that a man forms a design which at the time is unobjectionable because no election is in prospect, for that is the point; yet if circumstances alter and an election becomes imminent, he will go on with that design at his risk, and if he does so, he will be liable to be found guilty of corrupt practices; that is to say that he has done a thing which must produce an effect on the election contrary to the intention of the Act of Parliament.'

These decisions are authority for the proposition that there should be no sort of influence on the electorate in the guise of charity for securing votes when the election is imminent. It is the motive which is behind charity that should be taken into consideration in finding whether it is a "subtle form of bribery" or not. If motive is corrupt, then it is bribery (Vide also *Amritsar and Sialkot* (General Rural Constituency) Indian Election Cases by Doabia, Volume II

Page 94 at Page 96 where a donation of cash and plot of land made by the respondent for the construction of a Bhavan for his community and a further donation of Rs. 1,000 by him for treating visitors at a conference of his community people were held not to amount to bribery "to catch votes" of persons of his caste). All that the Election Court has to find is the motive which actuated the candidate in making the charity in question. If it is with a benevolent motive, then it cannot amount to bribery. In the present case, there is a definite statement made by P.Ws. 82 to 85 that the first respondent asked them to accept Rs. 4,000 for construction of Chunchankatte High School to get him votes and when P.W. 82 took exception to it as a bribe, he wanted it to be treated as a donation. It could never be treated as donation, as it was meant to secure votes. The election was in prospect then but this circumstance is not relevant for this case. This item has been proved.

65. Second item.—Petitioner's counsel argues that Sri Abdul Gaffoor Khan of Gundlepet, and Sri V. K. Nanjundiah 1st R.W. 74 were general canvassing agents of the first respondent and Sri Abdul Gaffoor Khan accompanied by 1st R.W. 85 and 1st R.W. 74 went to Makodu 4 or 5 days before the date of election and Sri Abdul Gaffoor Khan with the connivance of the other two, offered to construct a hospital building at Makodu at a cost of about Rs. 4,000 if the people of the village voted for the first respondent and on the date of election, he again turned up to the village and at the polling booth there, held up a piece of paper with type written matter and told the voters close by that it contained the sanction of Government for opening a hospital at Makodu. These are the particulars of the second item in the list. P.Ws. 87 to 90 are all residents of Makodu. P.W. 87 refers to Sri Abdul Gaffoor Khan of Gundlepet by name. P.W. 90 refers to him, 1st R.W. 85 and Khader Sheriff also by name and P.W. 88 to Sri Abdul Gaffoor Khan, Khader Sheriff and 1st R.W. 74 by name. P.W. 89 refers to a sowcar of Gundlepet having come to his village accompanied by some others. The incident alleged is said to have taken place 4 or 5 days before the date of election. P.Ws. 87, 88 and 90 say in one voice that Sri Abdul Gaffoor Khan and his companions turned up to Makodu in the morning when there was a meeting of villagers there for deciding as to whom they should all vote and Sri Abdul Gaffoor Khan wanted them to vote for the first respondent having promised to put up a hospital building for the village at his cost. P.W. 89 Dolle Gowda has also deposed accordingly, referring to him as Sowcar of Gundlepet and he has gone to the length of saying that he was prepared to spend Rs. 5,000 or Rs. 6,000 on the building. In the first list annexed to the election petition, the second item of bribery has been worded thus:—

"Offer of Rs. 4,000 to hospital at Makodu for exchange of votes etc."

But the wording goes to suggest that there was already a hospital functioning at Makodu. In the election petition itself, only an illegal practice has been attributed to Sri Abdul Gaffoor Khan and two others, that is, incurring of unauthorised expenses for holding public meetings and publication in the course of propaganda for the first respondent besides attributing to Sri Abdul Gaffoor Khan publication of a false statement of fact. Hence in the first instance, the petitioner has not made any allegations against him that he, with the connivance of 1st R.W. 85 and 1st R.W. 74, offered to bribe the electorate at Makodu on behalf of the first respondent by putting up a hospital building at his cost.

66. According to P.Ws. 87 to 90, on the date of election, Sri Abdul Gaffoor Khan turned up near the polling booth of Makodu and held up a piece of paper in this hand and represented to the voters there that it contained an order of Government sanctioning a Hospital for Makodu, cancelling the hospital building sanctioned for Athigodu. P.W. 88 pointedly refers to the paper containing some type written matter. The evidence of P.Ws. 87 to 90 is itself an after-thought as could be gathered from the petitioner's pleadings, bearing on the said offer; Sri Abdul Gaffoor Khan would not have turned up to the polling booth at Makodu on the date of election.

67. 1st R.W. 60 Mohamed Hussain is a merchant at Makodu. He owns a shop in which he sells provisions as well as cloth. He is positive that Sri Abdul Gaffoor Khan did not visit his village for canvassing for the first respondent during the period of election. Later he has specifically denied the truth of the allegations made by P.Ws. 87 to 90 as against Sri Abdul Gaffoor Khan. This witness's step-brother is one Mohamed Ghouse. Under Exhibit R(2) one M.A. Mohamed Ghouse has been appointed as polling agent of the first respondent at Makodu polling booth. The signature of M.A. Mohamed Ghouse in English in Exhibit R(2) was shown to the witness and he pleaded that he could not identify whether it was his step-brother's signature or not as he did not know English. He has no knowledge whether he was the polling agent of the first respondent. Hence there is no proof that M. A. Mohamed Ghouse, the signatory to Exhibit R(2) as polling agent

of the first respondent is the step-brother of this witness. Hence it has not been proved that he is interested in the first respondent. There is absolutely no reason why his evidence should not be believed. If Sri Abdul Gaffoor Khan had visited his village 4 or 5 days before the date of election and again on the date of election, certainly this witness would have come to know of it as Makodu is a small village.

68. Counsel for petitioner has also contended that the first respondent should have placed the best evidence on record in rebuttal of the evidence of P.Ws. 87 to 90 by the examination of Sri Abdul Gaffoor Khan himself. Sri Abdul Gaffoor Khan was one of the candidates for the Assembly election from Gundlupet Cum Heggadadevanakote Constituency and he was defeated in that election. As he had several rival candidates, much of his time must have been taken up for canvassing for his own election. No doubt, that election took place on 15th January 1952 but his election agent, 1st R.W. 74 has deposed that thereafter he (Sri Abdul Gaffoor Khan) remained in Gundlupet alone till a month prior to his examination when he took his child to Madras for tonsil operation, he too not having been in good health and he was not sure as to when he would return. In these circumstances, it was very difficult for the first respondent to get at Sri Abdul Gaffoor Khan and produce him as witness in this case. 1st R.W. 74 who appears to be well acquainted with the movements of Sri Abdul Gaffoor Khan has denied that he went to Periyapatna Constituency to canvass for the first respondent. He has also denied that he accompanied him to that Constituency for canvassing for the first respondent. Hence Sri Abdul Gaffoor Khan could not have toured Periyapatna Constituency at all during the period of election. Some witnesses for the petitioner have been examined with a view to show that Sri Abdul Gaffoor Khan canvassed for the first respondent in some other parts of the Constituency. At the appropriate place, their evidence will be commented upon but suffice it to say at present that he has never toured the Constituency and canvassed for the first respondent as stated by 1st R.W. 74. There is thus no proof of the said second item of bribery.

69. *Third item.*—It is an alleged offer by the first respondent to P.W. 9 Sri Siddamadappa and other residents of Thoragere, Periyapatna in the first week of January 1952 that he would provide them with timber free of cost for construction of Rama Mandiram building in their *keri* if the people of that *keri* voted for him at the election and he kept up his promise by giving timber to them subsequently. The evidence of P.W. 9 Sri Siddamadappa, P.W. 22 Kalappa, P.W. 21 Sri P. M. Mallikarjunappa and P.W. 23 Sri P. S. Narayana Rao is relevant in this connection. P.W. 9 is a Municipal Councillor of Periyapatna. P.W. 21 is the President of Periyapatna Municipality and P.W. 23 is the Vice President of this Municipality. P.W. 9 and P.W. 22 live in Chikka Thoragere. There is Dodda Thoragere also (Vide evidence of P.W. 22). In Thoragere, Rama Mandiram is located in a rented house. According to P.W. 9, the first respondent canvassed with him for vote 15 days prior to the date of election and asked him also to canvass for the votes of others in the *keri* and promised that, if he did so, he would give them timber free of cost for putting up a new Rama Mandiram building which is under contemplation and accordingly he worked for him for his election and after the election, he asked him to take delivery of the timber and he sent P.W. 22 to him to bring it and he brought three logs of timber and these were unloaded on the site meant for new Rama Mandiram building. P.W. 22 corroborates P.W. 9 as to the alleged offer on the part of the first respondent to give some logs of timber for the new building and adds that he asked him to vote for him, the other people in the *keri* having done likewise and at his request, he went to first respondent and got from him three logs of timber and a *mafi* pass to cart them to his place and he unloaded the logs near Rama Mandiram. He does not give the point of time as to when the carting of logs as alleged by him took place. On 29th April, 1952, P.Ws. 9, 21 and 23 and some other Municipal Councillors of Periyapatna went on town inspection and then they found that some logs of timber were being cut by the side of Rama Mandiram in Thoragere and when they were anxious to know whether Octroi was paid on these logs of timber, P.W. 9 apprised the others that it had not been paid and it was the first respondent that gave them the logs free of cost for construction of a new Rama Mandiram building in the *keri* and he thought that P.W. 22 might have paid the octroi on the logs (Vide evidence of P.W. 21). By that time, one of the three logs had been cut into planks and these planks were lying in Rama Mandiram building. The two logs that were at the saw pit were seized by the Municipal authorities under Exhibit AA, mahazar and the planks were seized under Exhibit AA(1) another mahazar. The two logs and the planks were taken to the Municipal Office and they were subsequently seized by the Police in connection with the investigation of the criminal case of alleged smuggling of timber against the first respondent. The first respondent does not dispute that he gave

the three logs of timber to P.W. 22. It has been suggested to P.W. 22 in cross-examination whether he stated before the Special Police Inspector of Hunsur who was investigating that criminal case that he purchased these logs from the first respondent for Rs. 80 and paid him Rs. 40 towards it. He has denied the suggestion. As regards the mafi pass, P.W. 22's version is that the first respondent himself took away the mafi pass from him, saying that he would get him a pit license for sawing the timber. P.W. 9 asserts, that, on 29th April, 1952 itself, subsequent to the seizure of the articles by the Municipality, he went to Sundaval to bring the mafi pass from the first respondent and he gave it to him also with a letter addressed by him to the President of the Municipality. Exhibit CC on that date for sending the mafi pass for "payment" (properly speaking, collection) of octroi on the logs mentioned in it and that he brought both of them and handed them over to P.W. 21. Evidently the octroi was collected from P.W. 22 thereafter. Exhibit CC is engrossed on the letter-head of the first respondent 1st R.W. 86. He admits that it is his letter-head but denies that he ever wrote and signed Exhibit CC and sent the mafi pass and the letter with P.W. 9. He also denies that he took the mafi pass from P.W. 22, promising to get him the saw pit license for him. The point is whether Exhibit C is genuine and P.W. 9 brought the mafi pass along with Exhibit CC from the first respondent. That a saw pit license is not necessary for Periyapatna Town is spoken to by 1st R.W. 86. So far as the letter-head is concerned, he thinks that some one might have taken it away from his office while purchasing timber. He denies that the signature purporting to be his in Exhibit CC is his. It compares favourably with his signature to Exhibit B. Exhibit R series go to show that he is in the habit of affixing his signature differently at different times. There is no ground to infer that P.W. 9 got Exhibit CC forged. The first respondent could have summoned the District Forest Officer, Mysore, to cause the production of the duplicate of the mafi pass and intimation to him as to the alleged sale of logs of timber to P.W. 22 also, if he had sent them to him under the Rules under the Forest Act. In the absence of such materials on record, there is nothing to discredit the testimony of P.Ws. 9 and 22 as to why the logs of timber were sent by the first respondent with P.W. 22 to Thoragere. 1st R.W. 58 Nanjiah, 1st R.W. 59 Koliiah and 1st R.W. 40 Patel Honnappa are all residents of Thoragere in Periyapatna. They all say that they learnt from P.W. 22 himself that he purchased the logs of timber from the first respondent for the construction of his house for Rs. 80 and paid Rs. 40 towards it and owed him the balance. The first respondent has failed to prove by not summoning the pertinent records, if any, from the District Forest Office that he sold the three logs of timber to P.W. 22. Hence the evidence of 1st R.Ws. 40, 58 and 59 must be deemed to be an after-thought. For these reasons, we hold that this item of bribery has been proved.

70. *Fourth item.*—It is an alleged promise on the part of Sri K. P. Karlappa (1st R.W. 68) an agent of the first respondent, to Yelakki Gowda (P.W. 71) Yejman of Edigar Keri in Periyapatna Town in the first week of January 1952, that timber would be supplied and Rs. 300 paid for the construction of Rama Mandiram in that keri if the people Edigar Keri voted for the first respondent. P.W. 71 is a resident of Edigar Keri in Periyapatna. He is also one of the Yejmans of Edigar community in that keri and Municipal Councillor of Periyapatna. First he refers to the alleged visit of the first respondent to his keri a month before the election and to his alleged promise to give timber and money for construction of Rama Mandiram in the keri if he canvassed votes of his community people there for him. The first respondent is said to have left the place, after he promised to do some thing for him. This evidence is not relevant as the incident alleged is not covered by it. P.W. 71 has stated that 8 days hence, 1st R.W. 68 came to his keri and promised to get him Rs. 300 as well as enough quantity of timber for construction of Rama Mandiram in the keri if he should secure votes for the first respondent, foundation for Rama Mandiram having been put up in the keri.

71. As against this evidence, 1st R.W. 57 and 1st R.W. 68 have been examined. 1st R.W. 57 Kade Gowda is the father-in-law of this witness. He denies that the first respondent promised the residents of Edigar Keri that he would give Rs. 300 as well as timber for construction of Rama Mandiram there if we voted for him. He makes it appear that P.W. 71 is an insignificant person in the locality, vending arrack under some one. But he has also stated that he is also one of the Yejmans of the keri like himself. 1st R.W. 57 does not deny the allegation made by P.W. 71 against 1st R.W. 68. As already pointed out, the alleged promise to give timber and money to the people of Edigar keri on the part of first respondent is not the instance of bribery relied on by the petitioner. 1st R.W. 68 denies the allegation made against him. He is also one of the general canvassing agents of the first respondent (Vide evidence of P.Ws. 6, 24, 36, 37,

49, 57, 61, 85, 101 and 105). 1st R.W. 68 knows P.W. 71 ever since his boyhood (Vide his evidence). They are well acquainted with each other and it is therefore probable that there is considerable truth in the allegation made by P.W. 71 against him. Hence this item has been proved.

72. *Fifth item.*—It is an alleged offer of timber and money on the part of the first respondent and his agent, 1st R.W. 68 to the residents of Upparkeri in Periyapatna Town in the first week of January 1952, for improving their Rama Mandiram with the object of securing votes of people of Uppar community in the kerl for the first respondent. P.W. 72 Vishakantiah and P.W. 73 Sannappa are residents of the kerl and P.W. 73 is also the Kote Patel of Periyapatna. P.W. 73 gives out that 20 days before the election, first respondent, 1st R.W. 68 and Kandagal Kariyappa came in a car near Rama Mandiram in the kerl and not only he and P.W. 72 but also others met them there and the first respondent asked the previous witness to canvass votes for him and promised him to give money and timber for construction of new Rama Mandiram building in the kerl for which stones were collected and all the others of the kerl who were present there informed him that they would abide by the decision of P.W. 72 as he was the leading person in the kerl. P.W. 72 also speaks to all these details.

73. 1st R.W. 68 denies that he and first respondent promised to give timber and money to the people of the kerl for the construction of Rama Mandiram in the kerl if they voted for the first respondent. P.Ws. 72 and 73 do not refer to his having made any such promise to P.W. 72. 1st R.W. 75 Kapiniah denies that 1st R.W. 68 and Kandagal Kariyappa had come to Upper Keri where he is also residing, along with the first respondent and adds that it is the first respondent that came there and asked them for votes. 1st R.W. 75 does not profess that P.W. 72 is one of the leading persons of the kerl but he styles himself as one of the Yejmans of the kerl. But it is evident from the testimony of P.W. 73 that he (P.W. 72) is an important person in that kerl. P.W. 73 is also one of the patels of Periyapatna. Hence there is no reason to disbelieve them. The allegation as against the first respondent is substantiated.

74. *Sixth item.*—It is an alleged offer of Rs. 100 by first respondent to Mallappa, Chairman of Village Panchayet of Honnapura (P.W. 50) to canvass for him. The evidence on the petitioner's side on this item is not at all satisfactory. Mallappa is P.W. 50. His evidence is to the effect that 15 days before the election, Sangarasettihalli Mari Gowda, first respondent and others came to his village, and Sangarasettihalli Gowda introduced the first respondent to him as a candidate for the Assembly election and then the first respondent asked him for his vote, but he told him that he was bent upon voting for the congress candidate. He adds that then the first respondent accused the second respondent of having 'decried Gowdali' in general, including Kurubars and Vokkaligars, and when he told him that if he heard of it from every one, he would make up his mind to vote for him, he took him by his hands to a lane and promised to pay money to him if he voted for him and canvassed the votes of villagers and when he declined the offer, he put Rs. 100 in his pocket and said that if he were not for accepting it, he might utilise it for some public purpose. P.W. 51 Javarappa is his co-villager and he purports that he was present at the time first respondent had paid the amount to him. He also corroborates the previous witness by saying that the first respondent told him at the lane that he would pay him Rs. 100 if he should canvass all the votes of his community people in the village and put Rs. 100 into his pocket, saying that it might be used for the worship of Diety in his village. Both these witnesses also mention that, at the instance of P.W. 51, P.W. 50 returned the amount to first respondent. If first respondent had really taken P.W. 50 to a lane to secretly bribe him Rs. 100, then he would have taken care to see that none else was present there and if P.W. 51 had followed them, he would not have bribed him at all. Hence their version on the point of bribery is not believable.

75. 1st R.W. 55, Kariyappa is a resident of Amblare. His name has been mentioned by P.W. 50 as one of those that had accompanied the first respondent to Honnapura. He emphatically denies that he ever went to Honnapur along with others to canvass for the first respondent and the first respondent took P.W. 50 to a lane and offered him Rs. 100 for canvassing votes for him. Nothing has been elicited in his cross-examination to suggest that he is not speaking the truth. Hence his evidence has to be relied on.

76. *Seventh item.*—It relates to an alleged offer of Rs. 300 by Sangarasettihalli Mari Gowda, an agent of first respondent, to P.W. 112 Mallappa of Venkatagowdana Koppal for canvassing votes for him. We have already held that Sangarasettihalli Mari Gowda was a general canvassing agent of first respondent. P.W. 112 pays a kandayam of Rs. 170 and hence he must be a person of some influence in his

village. According to him, Sangarasetthalli Mari Gowda came to his house and offered him Rs. 300 to canvass votes for the first respondent and he refused it. It is not at all probable that, without engaging him in any preliminary talk on the point of canvassing by him for first respondent, he would have straightaway handed over to him Rs. 300 to corrupt him as he is a person with some status in this village. Hence we hold this item also has not been proved.

77. *Eighth item.*—It is an alleged offer of Rs. 50 by the first respondent to Dodd Lakkappa of Alanahalli during second week of January 1952. P.W. 92 is Dodd Lakkappa. P.W. 93 Puttaswamy Gowda is a resident of Hunsvali. According to him, first respondent and some others came to his village and took him to Alanahalli and at the request of the first respondent, he brought P.W. 92 from the *karkana* of the village. P.W. 92 is also of Kurubar community and he makes it appear that, when the first respondent asked him to canvass votes of 300 families living in his village, he being a man of influence, he made it clear to him that they would not listen to him and then he caught hold of his hand and offered to pay him Rs. 50 for *puja* of the *Diety* in his village to induce the voters in the village to vote for him, but he refused the offer. P.W. 93 also speaks to this incident. Only first respondent, 1st R.W. 86, has denied the alleged incident. P.W. 92 pays a *kandayam* of Rs. 100 and hence it is probable that the first respondent approached him to canvass votes through his influence. First respondent's evidence in this connection is interested. Hence we hold this item is proved.

78. *Item No. 10.*—It pertains to alleged offer of money by first respondent to P.W. 105, T. V. Javarappa of Suraganahalli, at Bettadapur and Chapradahalli to prompt him to canvass for him. There is a shandy held on Tuesdays, midway between Halaganahalli and Suraganahalli (or Suraganahalli). As per P.W. 105, Sompur Chikke Gowda and Mohamed Hafeez Sab who accompanied first respondent, along with others, to the shandy 20 days before the election, introduced him to first respondent as an influential person in Suraganahalli and then the first respondent asked him to canvass votes for him in his locality and after he promised him to help, he went away to his village and that night at about 8 or 9 P.M. a relative of his was suffering from labour pains and they thought of a car to remove her to Yedathore hospital and hence he went to Halaganahalli where first respondent was camping and requested him to lend him the use of car on a hire of Rs. 30 but Sompur Chikke Gowda and Karl Gowda who were with him asked him not to accept any hire as he would prove useful to him in future and on their advice, first respondent lent him the car and he took it to his village and he removed the patient to Yedathore Hospital and brought back the car to Halaganahalli early next morning. As against this evidence, there is that of 1st R.W. 28 Karl Gowda and 1st R.W. 29 Javare Gowda, residents of Suraganahalli. 1st R.W. 28 is the father of the patient. He gives out that he took his daughter who was in labour pains in the car of the first respondent from his village when he had come there at 8 P.M. 8 or 10 days after Chunchanakatte jatra, to the maternity hospital at Konanur, he having lent the use of his car at his request. Evidently the witness is making a mistake in giving out the point of time, when the girl was taken to the hospital. Probably it might be 8 or 10 days before the Chunchanakatte jatra of 1952. 1st R.W. 29 also refers to this incident. It is not probable that P.W. 105 went in search of the car to Halaganahalli, without taking with him 1st R.W. 28, the father of the patient and offered to pay a hire of Rs. 30 for it to first respondent. Hence the car must have been made use of for the patient from Suraganahalli itself as deposed to by 1st R.Ws. 28 and 29 and the father of the girl, 1st R.W. 28, must have accompanied her to Konanur Hospital as stated by him. P.W. 105 has also come forward with a statement that he had canvassed for the first respondent in some places along with the first respondent and when he left Bettadapur for his place and covered some distance, he called him and offered him some money for his expenses while canvassing and he refused it and went away and some days later, they met at Chapradahalli and he offered him some amount for his expenses for canvassing for him and he refused it. P.W. 105 is not a straightforward witness as could be gathered from the way in which he deposed about obtaining the car for the patient. Hence we discard his evidence, relating to alleged offer of money to him by the first respondent and this item too is not proved.

79. *Item No. 11.*—It is an alleged offer of Rs. 200 by Sri V. K. Nanjundiah 1st R.W. 74, said to be an agent of first respondent, to P.W. 54, Anantha Subba Rao, a shanbogue, residing at Bettadapur, just a few days prior to the election for inducing him to canvass votes for the first respondent. P.W. 54 is the shanbogue of Chapradahalli. He makes it appear that 1st R.W. 74 came to his house before the election and asked him to canvass votes for the first respondent and

on his having refused to do so, he took him to Travellers' Bungalow at Bettadapur, saying that Sri Abdul Gaffoor Khan had come there and he might meet him and after he went there, 1st R.W. 74 kept on speaking with Sri Abdul Gaffoor Khan and as he was discarded, he came and sat at the *Aralekatte* in his village and some time hence, his brother P.W. 55 H. Nanjundiah also joined him there and 1st R.W. 74 came there and after he introduced P.W. 55 to him, 1st R.W. 74 tendered Rs. 200 currency notes to him and he refused to accept the amount. P.W. 55 H. Nanjundiah also refers to this alleged offer. We are of the view that the evidence of both these witnesses is not at all reliable. If 1st R.W. 74 took P.W. 54 to the Traveller's Bungalow with a view to bring about a meeting between him and Sri Abdul Gaffoor Khan, he would not have neglected him there and engaged himself in conversation with Sri Abdul Gaffoor Khan. We have already held in some other connection that Sri Abdul Gaffoor Khan never visited Periyapatna Constituency to canvass for first respondent. Whereas P.W. 54 has stated that the amount was tendered to him by 1st R.W. 74 after he became acquainted with P.W. 55. P.W. 55 has improved on this version by saying that he asked him to come to a side but he insisted that he might communicate to him any matter he liked as he and P.W. 55 were brothers. This is a material discrepancy as between the evidence of P.W. 54 and P.W. 55. Whereas P.W. 54 refers to a tender of money to him by 1st R.W. 74, P.W. 55 mentions that he thrust the amount into the pocket of P.W. 54. Both make it appear in cross-examination that it was a small matter. If really 1st R.W. 74 had attempted to bribe P.W. 54, they would have certainly taken it seriously.

80. Evidence of 1st R.W. 42, Ramaswamiah, that during the period of election, 1st R.W. 74 and Sri Abdul Gaffoor Khan did not come to Traveller's Bungalow at Bettadapur and evidence of 1st R.W. 43, B. R. Lakshminarayanappa that he did not find P.W. 54 and P.W. 55 at that bungalow some days prior to the election, *Aralekatte* being near it, do not serve any useful purpose, as it is not possible for any one to find out who would be visiting the Traveller's Bungalow or who would be squatting at the *Aralekatte* at all times. We have already referred to the testimony of 1st R.W. 74 that, till 15th January 1952, he had absolutely no time to tour in any other constituency, except Gundlepet Cum Heggadadevanakote Constituency as the election agent of Sri Abdul Gaffoor Khan, the Assembly election from this Constituency having taken place on that date. His evidence shows that he was a very earnest worker for Sri Abdul Gaffoor Khan and as such, he must have worked as hard as possible to see that he succeeded in the election. Having done so, he must have taken rest at Gundlepet, his place, after 15th January 1952 as stated by him. Petitioner has attempted to show that he was one of the general canvassing agents of the first respondent but we have no hesitation to hold that he never toured Periyapatna Constituency for the first respondent's sake, for the reasons aforesaid. Hence this item is not proved.

81. Item No. 12.—It is an alleged offer of Rs. 10 by Sangarasetthihalli Mari Gowda and Kempe Gowda, agents of the first respondent to P.W. 56 Srikantiah, Shanbogue on his way to Bettadapur on 23rd January 1952 for canvassing votes for him. 1st R.W. 56 is one of the shanbogues residing in Bettadapur. He purports that on 23rd January 1952, Sangarasetthihalli Mari Gowda and Kempe Gowda came near the polling booth at Halaganahalli when he had been there to see whether the arrangements there were alright and Kempe Gowda took him to a side and put ten rupee note in his pocket, saying that it was the desire of the first respondent that money should be paid to all the Shanbogues and Patels who would be on duty at polling booths and that he might canvass votes for him and he refused to accept the amount, saying that it was not possible to do so. The place of the said incident as given by this witness is quite different from what is stated in the list. If the incident complained of were true, this discrepancy would not have occurred. 1st R.W. 42 and 1st R.W. 43 have stated that a day prior to the election, 1st R.W. 42 asked P.W. 56 at his house as to who would succeed in the election in point and he gave out that people were supporting the new candidate and he was likely to succeed. Nothing has been elicited in the cross-examination of these witnesses to discredit their evidence. Hence this item too is not proved.

82. Item No. 15.—It is an alleged offer of Rs. 100 to Kullappa of Satyagala, Mari Gowda of Sangarasetthihalli and Rame Gowda of Bogenahalli each and Rs. 50 to Sidde Gowda of Haleyr by the first respondent and Sri S. Raju, said to be also an agent of first respondent, with instructions that they might treat voters at Chunchankatte jatra of 1952 and thus influence their votes. The only evidence on the point is that of P.W. 39, Sanna Mote Gowda alias Hanume Gowda and it is to the effect that the first respondent paid Rs. 100 to Sangarasetthihalli Mari Gowda, Rame Gowda and Kullappa each and Rs. 50 to Sidde Gowda. This

witness is not a reliable witness as he had made a reckless statement that he took arrack on the same day at the instance of Hutche Gowda and Dyave Gowda before he entered the house where the first respondent made the payments though he was not accustomed to take arrack. He also made another reckless statement that, after voting at Haleyr polling booth, he got the indelible ink smeared on his right index finger at the booth removed with a piece of pot tile and voted at Kuppe polling booth for the second time, personating for one Mote Gowda at the instance of Hutche Gowda and Venkate Gowda, Patel of Haleyr. There is no proof that he voted at Kuppe polling booth at all. The petitioner has not summoned the production of the electoral roll used by the Polling Officer at Kuppe Polling Booth to show whether one Mote Gowda was a voter on the roll and whether he issued a ballot paper against the name of Mote Gowda. Hence he has failed to prove the plural voting on the part of P.W. 39 as alleged. Hence P.W. 39's evidence as to the alleged payments made by first respondent to Sangarasettihalli Mari Gowda and others is not at all believable. 1st R.W. 53 denies that he ever saw P.W. 39 at Chunchankatte jatra of 1952 as well as all those allegations made against him by P.W. 39. 1st R.W. 54 Dyave Gowda also denies the allegation made against him by P.W. 39. Their evidence has not been shaken in cross-examination. Hence this item also has not been proved.

83. *Item No. 16.*—It is an alleged offer of Rs. 50 to Mari Gowda of Haleyr, P.W. 38 by Dyave Gowda and Sidde Gowda as agents of the first respondent during Chunchankatte jatra of 1952. It has not been pressed before us by the petitioner's counsel that Dyave Gowda and Sidde Gowda were canvassing for the first respondent as his general agents. P.W. 38 speaks to Sidde Gowda as having canvassed for the first respondent and to his having told him at Chunchankatte jatra of 1952 that Dyave Gowda and Javare Gowda too had come. He adds in examination-in-chief that Sidde Gowda took him to a side and offered him Rs. 50 saying that he must vote for the first respondent as well as canvass for him. Even assuming that Sidde Gowda canvassed for the first respondent, there is nothing to show in this witness's evidence that he was doing so with his knowledge. This witness's evidence about the incident in dispute is inconsistent with the relevant allegation in the list as he does not implicate Dyave Gowda also. Later, this witness has given the names of Dyave Gowda and Javare Gowda as having been present there at the time but, from it, it could not be inferred that Dyave Gowda and Sidde Gowda offered him the amount. 1st R.W. 54, Dyave Gowda denies that he ever got Rs. 50 paid to P.W. 38 by 1st R.W. 82 Sidde Gowda to canvass for first respondent. 1st R.W. 82 denies the incident alleged and adds that he was canvassing for the second respondent and even went to Mavathur for that purpose. He denies knowledge whether Mavathur has been included in Periyapatna Constituency. No proof has been placed on record to show that it has been so included or not. There is nothing to show that these two witnesses are purposely denying the incident alleged. Hence item No. 16 also is not proved.

84. *Items 21 and 22.*—Item 21 relates to alleged treating of voters by the first respondent and his agents, 1st R.W. 68, Sangarasettihalli Mari Gowda and Kempe Gowda in the hotels mentioned therein.

Item No. 22 relates to alleged treating of voters who resorted to certain polling booths by some of the agents of the first respondent in the hotels mentioned as against their names on 24th January, 1952, the date of election.

85. P.W. 28, Ananthiah is a hotel keeper in Kamplapura. His hotel does not find a place in the particulars of hotels shown as against items 21 and 22. Further his evidence is very vague as he has mentioned that the canvassers of first respondent took tiffin in his hotel on the date of the election and his volunteers who were moving on cycles were also taking tiffin in his hotel for 10 or 15 days prior to the election, he not having given out, at least, how many of them have visited his hotel.

86. P.W. 29 Gurusiddappa is also a hotel keeper in Kamplapura. His hotel too is not specified as against items Nos. 21 and 22. As per this witness, one Bette Gowda paid the cost of tiffin provided by him for the workers of the first respondent in his hotel on the date of the election but he passed a chit, Exhibit JJ to him for Rs. 11-5-0, the cost of tiffin he provided for about 20 cartmen he brought there that day. He has presumed that the alleged cartmen were those who had brought carts engaged for the first respondent as they had thatties with election symbol of first respondent 'cart' tied on their 'bicycles'. This statement carries no meaning as cartmen (driving carts) would not have come on cycles. It has not been made out as to whether Bette Gowda was the agent of first respondent. Later in re-examination, it has been elicited that they had come in bullock carts. If the said visitors had come to his hotel in carts, he would not have

made such a confused statement as the one he did. Through this witness, it is sought to be made out by way of inference that, in the carts, voters were brought for the first respondent to Kamplapur Polling Booth. Even assuming it was so, it should have been shown that Bette Gowda as agent of first respondent, had brought them. The witness would not have taken a chit like Exhibit JJ from presumably a stranger, that is, Bette Gowda.

87. P.W. 43 Venkata Subbiah is the Proprietor of Hotel Jayalakshmi Bhavan, Hosur. His hotel finds a place as against items Nos. 21 and 22. His evidence also is very indefinite, as he has stated that the first respondent used to come and take tiffin in his hotel along with his canvassers and pay for it and when his canvassers used to come and take tiffin there, one of them used to pay for it, during the period of election, as he has not given the cost of any tiffin so supplied and the names of even some of the alleged canvassers.

88. P.W. 44 H. S. Seetharamiah is managing Jai Hind Hotel, Hosur, which is mentioned as against both the items. He gives out that, about a month before the date of election, first respondent made a speech on election in front of his hotel and thereafter he brought 20 persons out of the audience and got them tiffin in his hotel and he himself paid for it and on the date of the election, some voters were treated to tiffin in the hotel by some of the canvassers of the first respondent. His evidence is lacking in similar particulars as that of P.W. 45. The hotel belongs to his paternal uncle and he is simply looking after it during his illness.

89. P.W. 49 is B. Srinivasa Rao of Bettadapur. He is Proprietor of Manjanatha Bhavan, a hotel there and it is also mentioned as against both the items. His evidence is that, for a period of one and half months, the canvassers of first respondent were coming to his hotel and taking tiffin, paying for it and Sangarasetthihalli Mari Gowda and others came to his hotel on two different occasions, once in a batch of 40 people and at another time in a batch of fifteen, just a few days before the election and they took meals in his hotel and Sangarasetthihalli Mari Gowda paid for the first batch and Kari Gowda for the second batch. This witness does not say the cost of the tiffin alleged to have been supplied to the canvassers of the first respondent or meals to the said two batches. Further it is very doubtful whether he is at least managing this hotel as the license to run it stands in the name of his brother.

90. Version of P.W. 74, Yelakeri Setti, who is running a hotel in Periyapatna, is that 10 or 15 days prior to the election, first respondent addressed a gathering at Periyapatna and first R.W. 68 and 1st respondent came to this hotel and first respondent kept Rs. 10 note on the table before him and went away and 1st R.W. 68 got some people who were brought inside the hotel, treated to tiffin for Rs. 12-8-0 and on the day of the election, Kandagal Kariyappa brought some people to this hotel and had them treated there to meals at a cost of Rs. 80. Even assuming that all these were true, there is nothing in evidence to show as to who the people that were treated to tiffin and meals were and whether Kandagal Kariyappa had them treated there to meals on behalf of first respondent.

91. P.W. 75 Venkatasubbiah is hotel keeper at Periyapatna. His evidence is that first respondent and some of his agents used to get tiffin to others, evidently on some days during the period of election. Such statement serves no purpose.

92. P.W. 91, Jayaram Bhatta, is Proprietor of Modern Cafe or Modern Hotel at Periyapatna. Modern Hotel is mentioned as against item No. 22. His testimony as to the alleged supply of meals and tiffin to the first respondent and his agents to the tune of Rs. 700 or Rs. 800 has been adversely commented upon while discussing the correctness of return of election expenses of first respondent.

93. The evidence of these witnesses is so bald and devoid of relevant particulars that it cannot be held to support the petitioner's averment as to treating of voters by the first respondent and his agents.

94. 1st R.W. 22, Kulle Gowda of Satyagala, is no doubt one of the general canvassing agents of the first respondent (*Vide* evidence of P.Ws. 36, 37, 39, 75 and 91). He was confronted with some entries in a small note book of accounts, Exhibit 'UU' said to have been maintained in P.W. 91's hotel. Exhibit UU does not come from proper custody. It was not produced by P.W. 91 but produced by the petitioner. He admits that Exhibits UU(1) and UU(2) are in his writing under his signature. Exhibit UU(1) is dated 20th January 1952 and the entries in Exhibit UU(2) bear the date 5th January 1952 and 1st R.W. 22 admits having made the entries for the cost of tiffin and meals supplied to him and others in that hotel. There is nothing in his evidence to suggest that he got some voters for the Assembly election treated to meals and tiffin in that hotel on the said dates for and on behalf of the first respondent. He admits the signature, Exhibit

UU(3) as his but denies that the entries over it relate to him. These entries are not proved and hence it is not necessary for us to pursue the matter further.

95. For all these reasons, we hold that there is no proof of items 21 and 22.

96. Petitioner's counsel has not pressed the other items of bribery in the amended list. For the aforesaid reasons, our finding on the first issue is that items 1, 3, 4, 5 and 8 under the caption 'Bribery' in the amended list are true.

97. We have pointed out that the District Board, Mysore has resolved to make a grant of Rs. 8,000 to Gurukula High School at Chunchanakatte long prior to the election. Hence our finding on the alternate first issue is in the negative.

98. We have come to the conclusion in one of the preceding paragraphs that the plural voting on the part of P.W. 39 Sanne Mote Gowda as alleged has not been proved. Hence our finding on the 8th issue is in the negative.

99. The counsel for the first respondent does not press issue No. 11. We therefore find it in the negative.

100. *Procuring the help of Government servants.*—In the amended list, the petitioner has given the names of five shanbogues who are alleged to have been approached by the first respondent with a request to canvass for him. They are P. Ws 54, 56, 103 and 106 and shanbogue of Koppa Shamanna.

101. Not only under Mysore Revenue Code but also under Sub Clause (b) of Clause (8) of Section 123 of the Representation of the People Act, 1951, Patels and Shanbogues come under the category of servants under the Government of the State. It is a major corrupt practice under Clause (8) of Section 123 of the Act if a candidate or his agent or any person with the connivance of the candidate or his agents obtains the assistance of any Government servant of the State in furtherance of the prospects of his election.

102. We have already held that 1st R.W. 74 is not an agent of first respondent and he did not attempt to bribe P.W. 54 to canvass votes for first respondent. Petitioner's counsel has argued that the first respondent attempted to secure the assistance of P.W. 96, Patel and P.Ws 103 and 106 Shanbogues to canvass for him.

103. In the first list, appended to the election petition, there is averment that the assistance of Government servants like Patels, Shanbogues and teachers was obtained or attempted to be secured. P.W. 96 is Patel Anniah, Patel of Hunsawadi. It is purported by him that, about a month prior to the election, first respondent met him at the shandy at Periyapatna and asked him to canvass votes for him and when he brought to his notice that there was Government order prohibiting him as patel from canvassing, he insisted that he might do so just like other patels and shanbogues, who were secretly canvassing, but he declined to do so.

104. On 29th November 1951, in the morning, a bus which was bound for Mysore from Bettadpur met with an accident at some distance from Bettadapur with the result that one Muslim passenger died and some other passengers were seriously injured and P.W. 103 B. V. Krishnappa, shanbogue of Bhoovana'halli went to the spot from his place of residence, Bettadapur (*Vide* his evidence). He alleges that first respondent came in a car there and when he, the witness, learnt that some injured persons had been admitted as in-patients in Periyapatna Hospital, he wanted to see them, and managed to go to Periyapatna in the car of first respondent and on the way, the first respondent asked him to get votes for him in his firka and he declined to do so though he brought to his notice that other shanbogues were canvassing for some candidates.

105. P.W. 96 was not put any question in cross-examination for the first respondent. Hence his evidence stands unassailed. P.W. 103 has been cross-examined but there is nothing to suggest any ill-will between him and first respondent.

106. P.W. 106 B. Krishnappa, is shanbogue of Udukote, probably Kudukur, as mentioned in the amended list. He has also been to the spot of accident. He also mentions that there the first respondent asked him to canvass votes for him for the Assembly election but he refused to do so as there was order of Government, restraining him from canvassing for others. This witness too has not been put any question in cross-examination on the point. Just like the evidence of P.Ws 96 and 103, his evidence also points to an attempt on the part of the first respondent to obtain his assistance to canvass votes for him. In the course of discussion on the return of election expenses of the first respondent, the assistance rendered by Sri G. S. Rame Gowda, Government Bus Inspector, then at Mysore, in getting

a credit account opened in the bank of Messrs. V. D. Rajaram and company, at Mysore for the first respondent and in procuring some vehicles for his election has been set out. The first respondent has obtained his assistance to further the prospects of his election. But it is not covered by any issue for want of pleading.

107. For the foregoing reasons, our finding on issue 3(a) is in the negative and that on issue 3(b) is that—assistance of P.W. 96 (Patel) and P.Ws 103 and 106 (shanbagues) was attempted to be procured by the first respondent in furtherance of the prospects of his election.

108. *Cart hire*:(a) The question for consideration is whether cart hire was paid by the first respondent or any of his agents to some witnesses for the petitioner for conveying voters to certain polling booths. It is a major corrupt practice under Clause 6 of Section 123 of the Representation of the People Act, 1951. Under the caption 'payment of cart hire' in the amended list, six instances have been set out but the petitioner has sought to prove only four of them.

(b) In the said list, the second item relates to an alleged payment of Rs. 20 as cart hire by 1st R.W. 72, agent of the first respondent to P.W. 66, Dodda Moge Gowda and P.W. 67 Rame Gowda at Benaganahalli on the date of election to convey voters to the polling booth, the same having been made in pursuance of a prior promise by the first respondent. P.W. 66 has mentioned that first respondent and others came to his village 3 or 4 days before Chunchanakatte Jatra of 1952 and after canvassing votes for the first respondent with the villagers, they went away and thereafter a day previous to the election, 1st R.W. 72 came to their village and offered to pay him Rs. 20 as cart hire to take old people and ladies to the polling booth and he asked him to pay it to P.W. 67 Rame Gowda, he having refused it and P.W. 67 took it. P.W. 67 corroborates him mainly on these points except that he has stated that 1st R.W. 72 paid it to him on the date of election, saying that he was not paying out of his pocket. P.W. 68 gives quite a different version as to alleged payment by 1st R.W. 72 to P.W. 67, that is, that he thrust the amount into the pocket of P.W. 67, on his refusal to accept it, having told him it was sent by the first respondent. This is a discrepancy. As to the point of time when the alleged payment is made, there is material discrepancy between the evidence of P.W. 66 on the one hand and that of P.W. 67 and P.W. 68 on the other. 1st R.W. 72 denies the alleged payment to Dodda Moge Gowda P.W. 66.

109. For these reasons, we hold that the evidence led by the petitioner on this item is quite discrepant and hence it is not proved.

110. (a) Third item relates to an alleged payment of Rs. 25 as cart hire by the first respondent himself to Sannappa (P.W. 69) at Muddenahalli in the second week of January 1952 for conveying voters to the booth. The evidence of P.W. 69 Sannappa of Muddenahalli is to the effect that four days prior to Chunchanakatte jatra of 1952, first respondent, Kulle Gowda and others came to his village and Kulle Gowda canvassed votes with his villagers for the first respondent and thereafter Kulle Gowda took him to a side and made the first respondent pay him Rs. 25 as cart hire for conveying female voters of his village to Dodda Koppal Polling booth P.W. 70 Nanjappachari also of Muddenahalli corroborates the previous witness about the alleged payment, he having joined them at the instance of P.W. 69. Kulle Gowda is the son-in-law of P.W. 69's elder brother. He has been examined as 1st R.W. 22, and he has denied the entire incident. There is nothing in the evidence of P.W. 69 or P.W. 70 to suggest that either of them has any animus towards 1st R.W. 22 and first respondent. Indeed 1st R.W. 22 admits that he is on good terms with P.W. 69. Hence 1st R.W. 22 must have taken undue advantage of his relationship with P.W. 69 and had the cart hire paid to him by the first respondent.

(b) Two other payments of cart hire are said to have been made by certain canvassers of the first respondent at Kogilur and Poonadahalli respectively on the date of election for similar purpose. They are items 1 and 4 in the list respectively. The evidence of P.Ws 64 and 65 (Chikke Urs and Range Gowda) relates to the alleged payment at Kogilur. According to them, first respondent, 1st R.W. 72 Javare Gowda, son of Mulki Dyave Gowda and others came to Kogilur 25 days before the election and after first respondent canvassed votes with them and requested them to secure votes of others also, he promised to render some help to convey ladies to polling booth in carts to vote and on the day of the election, 1st R.W. 72 paid Rs. 20 to P.W. 65 for being utilised as cart hire for the purpose. They have pointedly mentioned that 1st R.W. 72 told them that the first respondent sent it for being utilised as such cart hire. P.W. 64 is a graduate and P.W. 65 is a person with some status in life, owing lands, assessed at Rs. 40

or Rs. 45. There is no ill-will between them on the one hand and the first respondent and 1st R.W. 72 on the other. There is abundant convincing proof that 1st R.W. 72 has actively canvassed for the first respondent, a member of his community, though he has chosen to deny it. His son, C. J. Rame Gowda was also polling agent of the first respondent. Hence he was interested in pushing through the election of the first respondent and we have no hesitation in holding that he made the payment to P.W. 65 for and on behalf of the first respondent in pursuance of his prior promise.

(C)(1) The 4th item in the list is an alleged offer of Rs. 10 by 1st R.W. 68, Sri K. P. Kariyappa, agent of first respondent to P.W. 79 Kari Gowda of Poonadahalli, 3 or 4 days before the election for purpose of conveying voters in carts to Kandagala polling booth. As per P.W. 79, 1st R.W. 68 and some others came to his village and asked the villagers to vote for the first respondent and after he promised that they would vote for him, 1st R.W. 68 tendered him Rs. 10 and asked him to spend it as cart hire for conveying women and old people to the said polling booth but he refused it. He also gives the point of time as to when this incident is said to have taken place as found in the amended list. P.Ws 80 and 81 Siddappa and Thimme Gowda are also residents of the same village. P.W. 80 differs from P.W. 79 in having stated that P.W. 79 told him they would go to the polling booth and decide as to whom to vote. On the point of alleged tender of cart hire by 1st R.W. 68 to P.W. 79, all these three witnesses for the petitioner agree.

(2) 1st R.W. 68 denies any such payment to P.W. 79. He is interested in first respondent, he being his general canvassing agent. Hence his evidence on the point cannot be believed. For the foregoing reasons, we hold that the fourth item has been proved.

(d) The other items of cart hire have not been pressed before us by the petitioner's counsel. The petitioner has not adduced any proof of hire of any vehicles propelled by mechanical power, by first respondent and his agents for conveying voters to the booths.

111. Hence our finding on the fifth issue is that the first respondent has paid cart hire as per third item in the list and his agent 1st R.W. 72 as per first item and 1st R.W. 68 also his agent has attempted to pay cart hire as per 4th item for conveying voters to the respective polling booths and that first respondent and his agents have not hired any vehicles, propelled by mechanical power, for any such purpose.

112. There is no evidence that ballot papers were removed outside any polling booth at the instance of first respondent or his agents or by others with their connivance. Hence we find the 9th issue in the negative.

113. *Undue influence.*—(a) 8th item in the list pertains to an alleged coercion of Sidde Gowda, Cheluva Setty (P.W. 115) and Mari Gowda of Haleyur on the part of first respondent in the first week of January 1952 to canvass and vote for him. Out of the said three persons, only P.W. 115, Cheluva Setty has been examined. P.W. 115 has mentioned that 8 or 10 days before the Chunchanakatte Jatra of 1952, first respondent, Dyave Gowda (1st R.W. 54) and Mulki Javare Gowda (1st R.W. 72) came to his village and 1st R.W. 72 introduced first respondent to him as a candidate for the Assembly and asked him to canvass for him, also having told him (the first respondent) that he was influential in the village. According to the witness, it was then that the first respondent asked him to agree to canvass for him and he promised to consult his community people and do the needful and not being content with this reply, he asked him to swear that he would work for him for his election and he held his hands and he swore on God that he would canvass for him as well as ask his caste people to vote for him. This witness is not a simpleton. It is not probable that he would have taken oath on God, if the first respondent had simply held his hands. Hence his evidence is not believable. No reason has been assigned by the petitioner as to why Sidde Gowda and Mari Gowda have not been examined.

(b) 1st R.W. 54 and 1st R.W. 72 deny having canvassed for the first respondent. But there is some convincing evidence to show that 1st R.W. 72 has canvassed as general agent of first respondent (Vide evidence of P.W.s 64, 65, 66, 67, 68, 82 and 86) 1st R.W. 54 also had denied that he went to Haleyur for canvassing for him. Whatever it is, the evidence of P.W. 115 is uncorroborated and it is not reliable. Hence this item is not proved.

(c) Third item in the list is an alleged coercion of P.W. 40, Basave Gowda on the part of first respondent and Lakkappa (1st R.W. 11) of Chikka Koppal in the second week of January 52 at Chikkakoppal to vote and canvass for the first respondent. We have carefully gone through the evidence of P.W. 40 and

find that there are no materials in it even to infer that he has been forced by the first respondent and Lakkappa (1st R.W. 11) either to vote or canvass for him. Hence there is no evidence at all on this item.

114. 6th item.—(a) It is alleged coercion of Kapini Gowda, Chapradahalli, P.W. 52 on the part of the first respondent and his agents, Sri. S. H. Thammiah, 1st R.W. 69, Sri Mirle Kote Gowda 1st R.W. 73 and others in the first week of January 1952 to take oath that he would support the candidature of the first respondent and canvass votes for him in the entire village of Chapradahalli. Some witnesses have been examined by the petitioner to prove this allegation. Out of them, P.W. 52 has been examined at some length as he is the person that is alleged to have been subjected to undue influence 8 or 10 days before the commencement of Chunchanakatte jatra of 1952. Sri S. H. Thammiah 1st R.W. 69, Mirle Kote Gowda 1st R.W. 73, first respondent and others are said to have come to Chapradahalli then and asked the villagers to vote for him (first respondent) (*Vide* P.W. 1952's evidence). According to P.W. 52, he entered into a discussion with them that the second respondent had to be preferred to the first respondent but they told him that he decried the two communities, Kurubar and Vokkaligar, and they questioned him why, in spite of that, he should prefer him and thereafter 1st R.W. 69 also accused the second respondent as having been responsible for his not having been adopted as a candidate for the Assembly election from Krishnarajanagar Constituency on the Congress ticket but he pleaded that he was for voting for the second respondent as he had rendered much public service. He further mentions that thereafter 1st R.W. 69 and the first respondent made speeches to an evidence of villagers, emphasising that Lingayets formed the minority and Vokkaligars and Kurubars formed the majority of population in the Constituency and as such, it did not look nice if the first respondent should fall in the election and then some of the villagers questioned him why the second respondent should be helped when he was decrying the two communities and then 1st R.W. 69 and the first respondent held his hands and compelled him to take an oath that he would help the first respondent and said that, unless he did so, they would not let go his hands and after some time, he swore that they would all vote for the first respondent and they went away.

(b) P.W. 58 Linge Gowda, P.W. 59 Chikke Gowda, P.W. 60 Basave Gowda and P.W. 61 Basappa are all residents of Chapradahalli. P.W. 58 also gives out that the main cause for change of the mind of the audience at Chapradahalli in favour of the first respondent was the plausible propaganda carried on by 1st R.W. 69 there that the second respondent had decried the two communities and on account of such change in their attitude, they asked P.W. 52 who was bent upon helping the second respondent that he might tell them that they would vote for the first respondent and thereafter on his still persisting to support the second respondent, 1st R.W. 69 and the first respondent held his hands and they got a promise from him that he would support the first respondent. P.W. 59 has given out that Sri S. H. Thammiah, 1st R.W. 69 tried to prevail upon P.W. 52 who wanted to support the second respondent by bringing to his notice that all the seven thousand Kurubars in his Constituency had agreed to vote for him and questioned them why Vokkaligars in Periyapatna Constituency should not vote for the first respondent in preference to the second respondent who was also decrying the two communities and thereafter the first respondent and 1st R.W. 69 held the hands of P.W. 52 and asked him to swear that they would all vote for the first respondent only and on some of the villagers having questioned him as to why they should vote for the second respondent when he had decried the two communities, he swore so. P.W. 60 mentions that the main cause which changed the mind of the villagers in favour of the first respondent was the propaganda carried on by him and 1st R.W. 69 against the second respondent that he decried the two communities and then they held the hand of P.W. 52 and asked him to vote for the first respondent and he consulted the villagers and told them that they would vote for him.

(c) Most of these witnesses have been cross-examined on the point as to the extensive lands owned by the second respondent in his village and how he got them and to his having been borne on public bodies for several years. This is not material as these would not have influenced the electorate to vote against the second respondent. There are some suggestions in the course of cross-examination of P.Ws. 52 and 59 which go to show that Sri S. H. Thammiah 1st R.W. 69, and others were present at P.W. 52's house. In the cross-examination of P.W. 52, a suggestion has been made whether it was not a fact that 1st R.W. 69 made a speech that the second respondent was borne on several public bodies and the first respondent might therefore be given a chance to serve on them. It was

thus sought to be elicited whether he made a speech different from the one attributed to him by P.W. 52. P.W. 52 had accepted that he had made such a speech. Now the suggestion indicates the presence of Sri S. H. Thammiah, 1st R.W. 69, at P.W. 52's house. To P.W. 59, a suggestion was made in cross-examination as to whether first respondent Sangarasetthalli Mari Gowda and Kempe Gowda and others—asked Kapini Gowda, P.W. 52 to secure votes for the first respondent, as the first respondent was a new candidate for election and the second respondent had served on public bodies for some years. He has denied this suggestion. It indicates that the first respondent has admitted their presence at P.W. 52's house. From the evidence of these witnesses it is clear that P.W. 52 is looked up by the villagers as a leading person in their village. He is a man of some status in life paying a kadayam of Rs. 200 and as per P.W. 58, he (P.W. 52) has constructed a school building as well as a hospital building at Hosur. P.W. 61 corroborates P.W. 52 in all material particulars.

(d) 1st R.W., 73 admits that P.W. 52 is known to him since 7 or 8 years and he is also a leading person in his community. That being so, it is probable that P.W. 52 has given a truthful version as to what took place at his house at Chapradahalli.

(e) P.W. 27 L. Venkatappa does not give so many details on the point but speaks to a resolution passed by the Kurubara Sangh in Krishnarajanagar, said to have been referred to by the first respondent at P.W. 52's house that all Kurubars should vote for 1st R.W. 69 and all Vokkaligars should vote for him. This is the only witness that has referred to such a resolution having been passed. He has also referred to 1st R.W. 69 and first respondent having held the hands of P.W. 52 and to their having insisted that he should get all the votes of Vokkaligars for the first respondent, and his having promised to do so.

(f) As against this item, there is the evidence of 1st R.W. 17, Linge Gowda, Boge Gowda, 1st R.W. 18, Range Gowda *alias* Rangappa, 1st R.W. 19, 1st R.W. 69 Sri S. H. Thammiah and 1st R.W. 73 Sri Kote Gowda. 1st R.W. 69 denies that there was any agreement between him and the first respondent that Vokkaligars in Periyapatna Constituency should vote for the first respondent and by way of exchange, Kurubars in his Constituency should vote for him. He also denies that he ever did any work for the first respondent in his Constituency at the election, and that he and others brought to bear any coercion on P.W. 52 by taking *Kai Basha* from him that he should canvass only for the first respondent. Both he and P.W. 52 belong to Vokkaligar community. Petitioner's counsel has argued that an alliance was formed among 1st R.W. 69, first respondent and Sri Abdul Gaffoor Khan with a view to see that Kurubars in Krishnarajanagar Constituency were prevailed upon by the first respondent to vote for 1st R.W. 69, and Vokkaligars in Periyapatna Constituency by 1st R.W. 69 to vote for the first respondent in exchange and Muslims in Periyapatna Constituency by Sri Abdul Gaffoor Khan to vote also for the first respondent and it is on account of 1st R.W. 69 and Sri Abdul Gaffoor Khan having worked for the first respondent by virtue of this alliance, the second respondent was defeated. No doubt, there is a Kurubar Sangha in Krishnarajanagar but no proof has been placed by the petitioner that any resolution was passed by that Sangha that all Kurubars in Krishnarajanagar Constituency should vote for 1st R.W. 69 and similarly all Vokkaligars in Periyapatna Constituency should vote for the first respondent as stated by P.W. 27; but it is probable that, as there was no Kurubar candidate for the Assembly election from Krishnarajanagar Constituency and as there was no Vokkaligar candidate for Assembly election from Periyapatna Constituency, there was an understanding between Sri S. H. Thammiah, 1st R.W. 69 the first respondent that the former should canvass votes of all Vokkaligars in Periyapatna Constituency for the latter and the latter should canvass votes of all Kurubars in Krishnarajanagar Constituency for the former. One other fact is significant that Berla Chikke Gowda is a leading person among Kurubars in Krishnarajanagar Taluk and he had also resigned from the Congress party and he was helping 1st R.W. 69 by canvassing votes for his election (*Vide* the evidence of 1st R.Ws 69 and 73) 1st R.W. 86 has denied the alleged triple alliance. Byadarahalli is a village in Krishnarajanagar Constituency. There was a criminal case No. 560/51-52 against Krishne Gowda and others on the file of the Munsiff-Magistrate's Court at Krishnarajanagar. 1st R.W. 86 has figured as a defence witness in that case and therein he has deposed that he had been to Byadarahalli on 8th January 1952 for purpose of propaganda (*Vide* his evidence). It must be to carry on propaganda on behalf of 1st R.W. 69. Several witnesses for the petitioner have referred to the presence of 1st R.W. 69 at different places in Periyapatna Constituency, canvassing vigorously for the first respondent. After 1st R.W. 69 resigned from the congress party on account of his non-selection as a candidate for the Assembly election by Congress Parliamentary Board, he sought the advice of 1st R.W. 73 as to what to do further.

He advised him to stand as an independent candidate and he worked his 'utmost' for him so that he might succeed in the election. It is therefore not improbable that 1st R.W. 73 also worked along with 1st R.W. 69 and canvassed votes from Vokkaligars in Periyapatna Constituency for the first respondent so that Kurubars in Krishnarajanagar Constituency might support the candidature of 1st R.W. 69. 1st R.W. 69 must have felt aggrieved against the second respondent as he thought that he was responsible for his not having been adopted as a candidate by the Congress Organisation. This might have induced him to work also for the first respondent. 1st R.W. 73 denies that he did work for any candidate for the Assembly election from Periyapatna Constituency but this is not a fact.

(g) 1st R.W. 17 Linge Gowda is one of the leaders of a faction hostile to P.W. 52's faction in Chapradahalli. He denies that the first respondent held the hands of P.W. 52 and asked him to swear that he and others who were present at his house should vote for him. His is a bigger faction than P.W. 52's. It is suggested to this witness in cross-examination whether 1st R.W. 18 Boge Gowda and 1st R.W. 19 Range Gowda *alias* Rangappa are in his faction and he has denied it. 1st R.Ws. 18 and 19 purport to be in the faction of P.W. 52 and there is nothing to suggest in their evidence that they are in the other faction. 1st R.W. 19 denies that, when the first respondent came to his village for canvassing, he held the hand of P.W. 52, saying that he would not leave it unless he swore that they would all vote for him. 1st R.W. 18 also states that P.W. 52 did not swear so. He further denies that Mirle Kote Gowda, 1st R.W. 73 and Sri S. H. Thammiah 1st R.W. 69 came to his village for canvassing for the first respondent. We have already pointed out that P.W. 52 is a person of some respectability and hence he would not have come forward with any falsehood. Hence 1st R.Ws. 17, 18 and 19 must have purposely denied the said incident. Hence this item has been substantiated by reliable evidence.

115. **5th item:**—(a) It is an alleged coercion of the leaders of Kittoor and its Koppals, Senna Halage Gowda, Medde Gowda, S. Kariyappa, Sanna Gowda and others on the part of the first respondent and his agents. 1st R.Ws. 69 and 73, in the second week of January 1952 that they should give their full support to the first respondent by securing all the votes in these villages for him by having refused to take refreshment and drink from them till they solemnly promised so.

(b) In this connection, the principal witnesses of the petitioner are P.W. 109, Sanna Halage Gowda of Kittoor and P.W. 110 Puttaswami Gowda *alias* Subbe Gowda of Kempe Gowdana Koppal. P.W. 109 has mentioned that 5 or 6 days before the commencement of Chunchanakatte jatra of 1952, first respondent, 1st R.W. 69, 1st R.W. 73 and others came to Kittoor and at the instance of 1st R.W. 69, Doddanna Gowda 1st R.W. 13 summoned the leaders of his village at his shop. He has added that, when 1st R.W. 69 asked 1st R.W. 13 as to whom they intended to vote and when he told him that they all intended to vote for the second respondent, 1st R.W. 69 urged that they should all vote for the first respondent as the second respondent was responsible for his non-selection as a candidate for the Assembly election on the congress ticket and as, if Vokkaligars in Periyapatna Constituency voted for the first respondent, Kurubars in his Constituency would vote for him as otherwise he would fail in the election and thereafter the first respondent questioned them as to why they were for voting for the second respondent when he had decried the two communities in some places in Periyapatna Constituency and 1st R.W. 69 also endorsed the truth of the propaganda and then 1st R.W. 13 sent for some cups of coffee and 1st R.W. 69 refused to take it till they all swore that they would vote for the first respondent and then they placed their hands over the hands of the first respondent and swore that they would all vote for him. P.W. 110 also speaks to these details and adds that the first respondent also refused to take coffee till they swear so. P.W. 46 Basave Gowda had made a bare mention of this incident and has not even referred to the alleged taking of oath. According to him, he was going from village to village canvassing for the first respondent and P.W. 27 has given a different version by mentioning that 1st R.W. 13 and others placed their hands on the hand of Sri S. H. Thammiah, 1st R.W. 69 and took oath that they would vote for the first respondent. P.W. 27 also asserts that he has canvassed for the first respondent in several villages. Hence he is not able to give full details about this incident and his version as aforesaid might be due to a mistake. 1st R.W. 13 makes it appear that the first respondent visited Kittoor twice, once before Chunchanakatte jatra of 1952 and at another time after the jatra and requested him to canvass votes for him but he promised him his individual vote and on the second occasion, he did not ask him to swear by Kaibasha that he and others of his village should only for him as otherwise he would not take coffee. As regards 1st R.Ws. 73 and 69, he denies that they had ever come to his place to canvass for the first respondent. As to P.Ws. 109 and 110, he has given out that they were canvassing for the second respondent. No suggestion has been made in the cross-examination of P.Ws. 109 and 110 as to,

whether they were canvassing for the second respondent. S. Kariyappa, 1st R.W.27, has deposed similarly as 1st R.W.13. 1st R.W.27 was the polling agent of the first respondent at Kittoor. Hence he is interested in supporting his case. Further 1st R.W.13's senior wife is his elder sister. 1st R.W.14 Kari Gowda also speaks only to the second visit of first respondent to Kittoor and denies that there was any *Kaibasha* as alleged. 1st R.W.15 K. Thammiah also speaks to the second visit of the first respondent to the shop of 1st R.W.13 and denies the incident alleged, such as taking of oath by *Kaibasha*. 1st R.W.15 is the son-in-law of 1st R.W.13. 1st R.Ws. 13 and 15 must have deposed at the instance of 1st R.W.27.

(c) It has not been shown in the cross-examination of P.Ws. 109 and 110 why they should come and depose against 1st R.W. 69 and 1st R.W. 73 apart from the first respondent. Hence this item has been proved.

116. **7th item.**—It is an alleged coercion of P.W.66 Dodda Moge Gowda, P.W.67 Rame Gowda and P.W.68 Javare Gowda on the part of the first respondent and his agents, 1st R.W.72 and others that they must take oath on cow dung and betel-leaves and nuts to vote and canvass for the first respondent and this was during the second week of January 1952. P.W.66 lays the blame for this alleged incident at the door of 1st R.W.72. According to him, 3 or 4 days before Chunchanakatte jatra of 1952, first respondent, 1st R.W.72 and others came to his village and it was 1st R.W.72 that asked him to vote for the first respondent after having told him that the second respondent had decried the two communities, Kurubar and Vokaligar, and in that event, he agreed to do so but he was not content with his promise and he took *Kaibasha* from him and so far as P.Ws. 67 and 68 are concerned, he took oath from them with cow dung and betel leaf, by having placed them on their head though they promised to vote for him. There is material discrepancy in the evidence of P.Ws. 67 and 68 though they too have supported P.W.66 by saying that they all agreed to vote for the first respondent. P.W.67's version is that he took oath with cow dung and betel leaf and P.W.68 went away, promising to help the first respondent at the time of election. P.W.68 has said that he too took oath in that manner. On account of this material discrepancy, we hold that this item is not true.

117. The petitioner's counsel did not press the other items of undue influence as set out in the amended list.

118. For the foregoing reasons, our finding on the second issue is that items 5 and 6 in the amended list are true.

119. Shi O. Veerabasappa, counsel for the petitioner, contends that, with the object of setting up a Kurubar candidates for the Assembly election in dispute from Periyapatna Constituency, Kurubara Vidyaviriddi Sammelana was convened at Sundaval, the first respondent's village on 5-10-51 and at that Sammelana, the first respondent must have been set up by Sri T. Nariyappa, the then Minister to the Government of Mysore, to contest the election as against the second respondent who had fallen out with him on the floor of the Mysore Legislative Council, before the general election. That very day there was the annual function of the Multi Purpose Co-operative Society at Sundaval. 1st R.W.61 S. P. Javarappa of Sundaval had produced Exhibit XV notifying the holding of the Sammelana and Exhibit XIV, an invitation for the annual function of the Multi Purpose Co-operative Society at Sundaval on the said date. From these Exhibits, it is gathered that the Society function preceded the Sammelana, and Sri T. Mariyappa presided over the Society function, and inaugurated the Sammelana, Sri S. Raju, Advocate, Mysore, having presided over it. The first respondent is the President of the Society at Sundaval and he was one of the Joint Secretaries for the Sammelana. P.W.75 P. Venkatasubbiah is a hotel keeper at Periyapatna. According to him, it was at the instance of the first respondent he went to Sundaval at the time of the opening ceremony of a Kurubara Sangha there three months before the election and prepared meals and tiffin for the invitees to it. He also makes it appear that that function was largely attended by leading Kurubars and Sri T. Mariyappa made a speech there, emphasising that their community would prosper if a Kurubar candidate was made to stand for the ensuing Assembly election. No Kurubara Sangha was opened at the Sammelana and hence this witness has not gone to Sundaval at all. For the first respondent, it has been sought to prove that one Gopal Rao and not P.W.75 that attended to the preparation of meals at that time. 1st R.W. 61 S. P. Javarappa's statement that it was Gopal Rao that prepared meals for the invitees to the Society function and some local people for invitees to the Sammelana, must be true as there is nothing to discredit it. As the object for which the Sammelana was convened was for promotion education of Kurubars, as per Exhibit XV, it is not probable that Sri. T. Mariyappa dwelt on matters relating to election. Indeed, 1st R.W.61 denies that

he spoke on election then and 1st R.W.83(Sri. N. M. Lakkappa) has given out the purport of the discussion that took place at the Sammelana, as having centred on the education of Kurubar boys and providing schools for them out of contributions to be raised. There is nothing on record to suggest that Sri T. Mariyappa even indirectly exported the first respondent to stand as a candidate for the Assembly election for the advancement of the Kurubar community and called upon the audience to support his candidature and infuse courage in him to face the election.

120. In this connection, evidence of the second respondent (2nd R.W.1) has to be adverted to. The second respondent has attempted to show through some Exhibits that Sri T. Mariyappa failed to tour Periyapatna Constituency in spite of the then President of the Mysore Congress Organisation and the second respondent himself having brought to his notice that the non-congress candidate from this Constituency was giving out to the electorate that he was set up by him and his friends for the Assembly election. Exhibit X is copy of a letter the second respondent addressed to Sri. T. Mariyappa on 15th December, 1951. Thereby he has requested him to tour Periyapatna Constituency to disabuse the mind of the electorate that the first respondent had been so set up by him. The then Congress President, Sri. K. Hanumanthaiya addressed Exhibit XII, dated 24th December 1951, making a similar request to him in such circumstance. Exhibit XIII is a letter addressed by the second respondent to the President of the Mysore Congress Organisation on 14-1-52, *inter alia* to the effect that Sri Khader Sheriff of Arenahalli was sent for by Sri. T. Mariyappa and asked by him to canvass for first respondent. Second respondent must have examined Sri. Khader Sheriff for proving this allegation.

121. It is now argued by Sri. O. Veerabasappa for the petitioner that, from the omission of Sri. T. Mariyappa to tour Periyapatna Constituency and carry on election propaganda for the Congress candidate, the second respondent, it must be inferred that he was supporting the candidature of the first respondent, a member of his community as against him. On 27-5-53, Sri. H. K. Veeranna Gowda, the present President of the Mysore Congress Organisation, produced some correspondence from the Congress Office at the instance of the petitioner and Sri T. Mariyappa too appeared on that date on summons taken out by the petitioner for causing production of some correspondence. Sri. T. Mariyappa represented to the Tribunal that it was missing and the first respondent's counsel insisted that he might be examined with reference to his statement. The Tribunal found it unnecessary to do so after objection to his examination was raised by petitioner's counsel. We are of opinion that later the petitioner's counsel should have examined Sri. T. Mariyappa and elicited from him as to why he did not undertake an election tour in Periyapatna Constituency and support the Congress candidate. If his evidence had been placed on record, then the Tribunal would have had enough material to judge whether the contention put forward by Sri. O. Veerabasappa was sound or not. 2nd R.W. 1 admitted in cross-examination by the counsel for 1st respondent that he only guessed that he might have made him stand as a candidate to oppose him. He has also inferred from his omission to tour the constituency that the first respondent must have had the support of Sri T. Mariyappa both as Home Minister and Congress leader at the election. Sri T. Mariyappa's omission to tour the Constituency is not enough to raise any such inference, without his evidence.

122. 1st R.W.86 has admitted that Sri. H. K. Veeranna Gowda, present President of the Mysore Congress Organisation issued a cheque to him in his favour for Rs. 400/- on the Bank of Mysore, Mandya Branch, and he cashed it in that Branch on 3-8-53. It has been suggested to him in cross-examination for the petitioner whether Sri. T. Mariyappa, now General Secretary of the Mysore Congress Organisation, gave him Rs. 400/- to meet the cost of this litigation through the cheque he got issued by Sri H. K. Veeranna Gowda to him so that his identity might not be disclosed, and he has denied the suggestion and in re-examination, he has stated that the cheque was issued by Sri. H. K. Veeranna Gowda in his favour at the Assembly hall for payment towards the advance he (Sri. H. K. Veeranna Gowda) had to pay to Jai Bharathi Trading Company, Hunsur, for the purchase of timber by him from it and this statement that the cheque was towards the said advance must be true, there being no basis for the said suggestion.

123. In the list of particulars of corrupt practices appended to the election petition, it is averred by the petitioner that the following false statements of fact have been published in relation to the personal character and conduct of the second respondent, either by the first respondent or his agents or others with their connivance as pleaded at paragraph 3(c) of the election petition, knowing these to

be false being statements reasonably calculated to prejudice the prospects of the second respondent's election:—

- (i) Kurikayuva Kuribanigoo holauli. bhara maduvu-dhakkhe arhatne idhaye? eno avau, Hosuru, Ravandooru munthada eneka
- (ii) Chanabasappanavaru 20 Savira rupayee gallannu badvarige hanchalu sarkaradinda tharisi kondu ellavannoo thave dhurupayoga padisi kondu janarige dhiroha madidhdhare.
- (iii) Musalmanrellaroo deshdrohigalu, Evaryaroo namma deshadhallira koodadu. Ellaroo pakistanakke kaluhisa bakendu Channa basappa navaru Gundlupate yalli bhashana madidhdhare.

124. Such a publication of false statements of fact as indicated in the preceding paragraph, if proved, amounts to a corrupt practice under Clause 5 of Section 123 of the Representation of the People Act, 1951. The clause does not cover an expression of opinion or criticism. It strictly forbids reference to the private life of a rival candidate, so far as false statements go.

125. From a mere persual of the statement aforesaid, it could be seen that, if these had been published by the candidate or his agent, then these would have had a very bad repercussion on the prospects of the second respondent's election as these were in relation to his personal character or conduct. A statement of fact by a candidate or his agent about his rival at the time of election may be even harsh, or derogatory but so long as it does not amount to a false statement of fact affecting his personal character or conduct, it will not be a malpractice. Such is the view taken Darling J in (C. 1911) 1 O. & H. 155 (Murmouth Division) Case(1901) 5 O' M & H 155.

126 (a) As regards the second alleged false statement of fact that Rs. 20,000/- was obtained by second respondent from Government for relief of poor people and he had misappropriated it, some witnesses were examined for the petitioner. P.W.77 is Patel Puttiah residing at Periyapatna. There is a military hotel opposite to his house. His statement is to the effect that Sri. Subbe Gowda (1st R.W.39) had come to the military hotel three or four days before the election and was asking the people there to vote for the first respondent as the second respondent had misappropriated Rs. 20,000/- he had obtained from Government for the relief of the poor. This witness's evidence cannot at all be relied on as he never went to the military hotel at about that time and as he was not able to say as to who were present there then. Sri. Subbe Gowda contested the Municipal election with him at Periyapatna from the same Division and he, the witness, was defeated. This was two or three months after the Assembly election. Hence there is ill-will between them. Petitioner's counsel has not given out his name as one of the general canvassing agents of the first respondent. 1st R.W.39 has denied that he made any such propaganda.

(b) P.W.85 has attempted to implicate Kempe Gowda as having stated at Hale-yur in the course of election propaganda that the second respondent had misappropriated Rs. 20,000/- for the relief of victims in the outbreak of fire at P.W. 82 has tried to implicate 1st R.W.50 Sri. T. Venkataram, as having carried on propaganda at Dodda Koppal against the second respondent about the alleged misappropriation. About Kempe Gowda, there is abundant evidence that he and Sangarasetthalli Mari Gowda were moving together as general canvassing agents of the first respondent mostly. That 1st R.W.50 was also one of such agents of first respondent, is evident, from the testimony of P.Ws. 24, 76, 78, 79, 80, 82, 94 and 95. P.W.41 Murthyachar, has attributed to the first respondent that, at Kittoor, he had made a propaganda against the second respondent that the decried Kurubar and Vokkaligar communities and also misappropriated Rs. 40,000/- granted by Government for relief of people whose house had been destroyed by fire. P.Ws. 109 and 110 who were the principal witnesses examined by the petitioner to speak to the happenings at Kittoor have not at all accused the first respondent as having made such a false propaganda, bearing on P.W.41's evidence on the point is not at all believable and evidence of P.W.82 and 85 conflicts with that of P.W.41 as to the alleged amount of misappropriation. 1st R.W.50 Sri Venkataram denies having canvassed for first respondent.

(c) P.W.94 Boge Gowdana Javarappa is of Hunswadi. His allegation is that at Hunswadi, while canvassing for first respondent, 1st R.W.68 told the villagers in general terms that second respondent had obtained money from Government and

had misappropriated it. He does not even say that it was for the relief of the poor. This is very vague.

127. Hence we hold that there was no publication of any false statement of fact by the first respondent or his agents relating to the alleged misappropriation.

128(a) The third false statement of fact alleged is to the effect that the second respondent has made a speech at Gundlupet that Muslims are traitors to the country and they must all be sent to Pakistan. Petitioner has sought to prove that Sri Abdul Gaffoor Khan of Gundlupet has published this false statement of fact in some villages in Periyapatna Constituency, rousing the feelings of Muslims in these villages against the second respondent. Evidence of P.Ws. 97 to 100 is relied on by him. According to P.W.97, Khazi Rahimthulla Sheriff, five days before the election Sri Abdul Gaffoor Khan of Gundlupet came to his village Halaganahalli, and at the hospital building, there was a meeting of the villagers at which he asked them to vote for the first respondent when they apprised him that they were for voting for the second respondent, as the second respondent had told the electorate in Gundlupet Taluk that Muslims were traitors and all of them should be sent to Pakistan. P.W.98 Fekker Ahmed Sab and P.W.99 Abdul Khader have corroborated him except that they have stated that Sri Abdul Gaffoor Khan told them that, if they wanted to remain in India, they must vote for the first respondent and if they should vote for the second respondent, they had to go away to Pakistan. If the alleged visit of Sri Abdul Gaffoor Khan to Halaganahalli was his first visit, as made to appear by P.W.97, then it is not probable that they took any such statement as alleged for granted and turned in favour of the first respondent at the election, P.W.100 Baji Sab of Dodda Nerale also alleges that four or five days before the election, Sri. Abdul Gaffoor Khan came to his village and at the mosque, he asked them to vote for the first respondent as the second respondent carried on a propaganda in Gundlupet Taluk that none should vote for him at Assembly election from his Constituency as Muslims were likely to go away to Pakistan, and said that, by doing so, they would be remaining in the country but, if they voted for the second respondent, they would be compelled to go to Pakistan.

(b) 1st R.W.23 Jamal Sheriff and 1st R.W.24 Baba Saheb deny that Sri Abdul Gaffoor Khan visited their village Halaganahalli during the period of election. 1st R. W.34 Ghouse Peer of Dodda Nerale denies that he visited his village and canvassed for the first respondent during the period of election. There is nothing to discredit the testimony of these witnesses. We have already referred to the evidence of 1st R.W.74 Sri V. K. Nanjundiah of Gundlupet on the point. 1st R.W.74 is a respectable witness. He was borne on public bodies also and owns lands paying a kandyam of Rs. 140/-.

129. P.W.37 Kenchiah of Kamplapur referred to the alleged arrival of Sri Abdul Gaffoor Khan at the Muslim Keri in Kamplapur and stated that he asked the Muslims there to vote for the first respondent. P.W.26 S. S. Thammappa refers to his alleged arrival at Kamplapur shandy when the first respondent was there. 1st R.W.31 denies that he came to Kamplapur shandy with the first respondent during the period of election. So also is the version of 1st R.W.32 Muddammanniah. He is a respectable merchant dealing in tobacco on a large scale. There is nothing to show why his evidence should not be believed. Hence Sri Abdul Gaffoor Khan did never visit any part of Periyapatna Constituency.

130. Much evidence has been adduced by the petitioner to prove that it was published by the first respondent and his agents at several places in the Constituencies, that the second respondent decried the two communities Kurubar and Vokkaligar, at some villages in it, and petitioner's (P.W. 107's) evidence is that it enraged the electorate and they voted for the first respondent. He gives out the strength of the electorate in Periyapatna Constituency as 12,000 Vokkaligars, 9,000 Kurubars, 2,000 Lingayets and evidently some members of other communities. Hence Vokkaligars and Kurubars form the majority of population in Periyapatna Constituency and this propaganda if it has been made, must have been taken by most of the voters to be true and thereby the prospects of election of the second respondent must have been affected adversely. First respondent (1st R.W.86) admits that the second respondent never made any speech to that effect in Periyapatna Constituency.

131(a) The following witnesses for the petitioner involved the first respondent as having published this false statement of fact that the second respondent decried the two communities, at the places set out against them respectively. P.W.40 at Chick Koppal, P.W.41 at Dodda Koppal, P.W.50 at Honnapur, P.Ws 59

and 60 at Chapradahalli. P.W.116 at Telegana Kuppe, P.W.93 at Hunsvadi, P.Ws.25 and 26 at Kamplapur shandy, P.W.27 at Kuppe, P.W. 37 at Kamplapur and P.Ws 109 and 110 at Kittoor.

(b) Some of the witnesses for the petitioner involve some of the agents of the first respondent also as having made this propaganda as follows:—

P.W.24 involves 1st R.W.68 and 1st R.W.50 at some places, P.W.51 Sangarasettihalli Mari Gowda as Honnapur, P.W.53 1st R.W.50 at Dodda Nerale, P.W.52 1st R.W.69 and 1st R.W.73 at Chapradahalli, P.W.59 1st R.W.69, Sangarasettihalli Mari Gowda and Kempe Gowda at Chapradahalli, P.W.60 1st R.W.69 at that village, P.W.61 1st R.W.69 and 1st R.W.73 at that village, P.W.113 Sangarasettihalli Mari Gowda, 1st R.W.22, 1st R.W.52 Thalki Javare Gowda and 1st R.W.61 at Venkategowdanako pal. P.W.114 1st R.W.52 and Sangarasettihalli Mari Gowda at the same village, P.W.85 Kempe Gowda at Haleyr, P.W.94 1st R.W.68 at Hunsvadi, P.W.95 1st R.W.68 at Hunsvadi, P.W.36 1st R.W.68 and Siddappa at Kamplapur shandy, P.W.37 1st R.W.61 at Kamplapur, P.W.101 Sangarasettihalli Mari Gowda at Chikka Nerale, P.W.102 1st R.W.68 at Bhuvanahalli, P.W.57 Sangarasettihalli Mari Gowda at Rajanabelaguli, P.W.62 Kempe Gowda and Sangarasettihalli Mari Gowda at Haronahalli, P.W.63 Sangarasettihalli Mari Gowda, Kempe Gowda and 1st R.W.52 Thalki Javare Gowda at Bhuvanahalli, P.W.66 1st R.W.72 at Benaganahalli, P.W.78 1st R.W.68 at Hittene Hebbagalu and P.W.82 1st R.W.50 at Dodda Koppal. The concerned witnesses for the first respondent deny the propaganda of this false statement of fact attributed to them.

(c) Hence there has been a wide spread propaganda of this false statement, decrying the two communities.

132. Hence our finding on the fourth issue is that the first respondent and his agents referred to by the witnesses for the petitioner have published false statement of fact decrying Kurubar and Vokkaligar communities, in relation to the personal character or conduct of the second respondent reasonably calculated to prejudice the prospects of the second respondent's election and that the alleged publication of the other two false statement of fact referred to in paragraph 123 supra is not true, and that on the alternate fifth issue is that this false statement of fact decrying the two communities, is oral and the names of persons to whom the publication was made have been set out by the witnesses for the petitioner referring to it.

133. The alleged illegal practice, the subject matter of the seventh issue, has not been proved by the petitioner. Hence our finding on this issue is in negative.

134. 1st R.W.84, Sri H. K. Kumaraswamy has given out some political causes other than the commission of corrupt practices on the part of the first respondent and some of his agents as having brought about the defeat of the second respondent. It is not necessary to go into those causes.

135. Kempe Gowda, Sangarasettihalli Mari Gowda, Kullappa of Satyagala (1st R.W.22) Thalki Javare Gowda (1st R.W.52) 1st R.W.50, 1st R.W.11, Kandagal Kariyappa, 1st R.W.69 and 1st R.W.73 apart from those already mentioned were the general canvassing agents of the first respondent.

136. As the first respondent himself was mainly responsible for the commission of the corrupt practices as proved we do not feel called upon to take any action against the agents of first respondent, who have committed certain corrupt practices under Section 99 of the Representation of the People Act, 1951 and this is our finding on the 10th issue. Section 140 of the Act lays down that a returned candidate has to be disqualified from membership of the Legislature of the State for the commission of corrupt practices mentioned in Section 123 or 124 of the Act for a period of six years, counting from the date when the finding of the Tribunal as to such corrupt practices take effect under the Act.

137. Under the 12th issue, we hold that the commission of corrupt practices on the part of the first respondent and some of his agents as proved, has materially affected the result of the election and the election of the first respondent to the State Legislative Assembly has not been a fair and free one and it is declared that election of the returned candidate, first respondent is therefore void, and we direct that the first respondent shall incur disqualification of membership of the Legislature of the State for the commission of certain corrupt practices under Sections 123 and 124 of the Representation of the People Act, 1951, as held supra, for a period of six years counting from the date on which the finding of

this Tribunal as to such corrupt practices, take effect under this Act and in the result, this election petition is allowed with costs to be borne by the first respondent. The costs is assessed at Rs. 500/- including petitioner's Advocate's fee which is fixed at Rs. 250/-. The second respondent shall bear his own costs in the circumstances of the case.

Dictated to the Stenographer and pronounced in open Court on the 9th day of November 1953.

1. (Sd.) V. KANDASWAMI PILLAI, *Chairman*,
2. (Sd.) H. HOMBE GOWDA, *Judicial Member*,
3. (Sd.) MIR IQBAL HUSAIN, *Advocate Member*,
Election Tribunal, Mysore, Bangalore.

[No. 19/135/52-Elec.III/14599.]

By Order,
K. S. RAJAGOPALAN, Asstt. Secy.

